



THE INSTITUTE OF
Company Secretaries of India

भारतीय कम्पनी सचिव संस्थान

IN PURSUIT OF PROFESSIONAL EXCELLENCE

Statutory body under an Act of Parliament
(Under the jurisdiction of Ministry of Corporate Affairs)

Centre of
Excellence
Hyderabad



IMPACT ANALYSIS OF TURBULENT TIMES ON COMPANY SECRETARIES

An ICSI-COE Compilation of Articles June, 2020

Published at the Hands of Shri Nitin Gadkari, Hon'ble Minister of Road Transport and Highways, Micro, Small and Medium Enterprises, Government of India, CS. Ashish Garg, President ICSI and CS. Nagendra D Rao, Vice President, ICSI on 08th June 2020.

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PRESIDENT'S MESSAGE

"We will only secure a prosperous, peaceful and liveable planet if we harness economic growth and development to social solidarity across and between generations."

The heavy worded quote of well renowned author, Oscar Auliq-Ice, says a lot as to how the future of the nation or the entire world looks like, if we are to deliberate upon a Post-COVID scenario. Given the far reaching impacts of the pandemic and the lockdown imposed as a mechanism to prevent its spread out, the economies not only at a national but global level are trying to find out ways to look at the situation from a perspective of future growth and development.

Given the fact that living with COVID-19 will become a new normal, Governments across the globe are exploring new ways of working to tackle the current concoct of economic crisis accompanying the pandemic.

And it is one such explorations that in the Indian context, the idea of carving out a self-reliant and a much more resilient nation has been thought. The notion of an Aatmanirbhar Bharat, is what has been stressed upon by the Hon'ble Prime Minister of India with the belief that Economy, Infrastructure, System, Demography and Demand are five essential pillars on which can be built the foundations of an Aatmanirbhar Bharat. A support package to 10% of the GDP followed by a detailed investment and relief plan for almost each and every segment of the economy speaks volumes of the dedication and commitment on the part of the government to achieve its designated goals.

As Company Secretaries, as Governance Professionals, it is inevitable and imperative that we realize, and understand our roles and responsibilities and align ourselves with this new founded vision of the nation. While promoting Ease of Doing Business has been on the agenda of the Government and a host of initiatives and measures have been introduced the same would require the support of the professionals to not only improve the efficiency of organizations and increase their profitability but contributing towards achieving the vision of India to become self-sufficient economy.

In an attempt to gather the views of members on measures for economic revival and scope of growth of professionals in these times of turbulence, the ICSI-COE, Hyderabad has brought forth a publication as a compilation of the varied perspectives of members under the aegis of "**The Impact Analysis of Turbulent Times on Company Secretaries**". I am sure that this work, shall equip our professionals with the much-needed direction and long term focus to deal with this difficult situation.

I appreciate the efforts undertaken by the team ICSI-COE under the guidance of CS Devendra V. Deshpande, Council Member, ICSI in bringing out this publication. I express my deep gratitude towards all the members who have contributed their articles and suggested various initiatives that ICSI can take for the betterment of the profession. For as Eleanor Roosevelt says, "*One's philosophy is not best expressed in words; it is expressed in the choices one makes... and the choices we make are ultimately our responsibility*".

CS Ashish Garg
President
The Institute of Company Secretaries of India

FOREWORD

“Mankind does not reflect upon questions of economic and social organization until compelled to do so by the sharp pressure of some practical emergency.”

— R.H. Tawney, Religion and the Rise of Capitalism

The profitability of companies is dependent on their key Brands which we also call as cash cows, and these brands thrive on the loyalty of their consumers. However in today's scenario brand loyalty has become a history as humankind is struggling to fight the menace of Covid-19. Suddenly the mankind is surviving on essentials. The phenomenon of brand loyalty is slowly getting weakened due to the spread of this Pandemic. This is causing aggregate demand to collapse across the globe. Many sectors especially the aviation and hospitality industry is affected due to the health crisis. The Supply Chain Disruptions and demand fluctuations have negatively affected production in almost all industries.

In this backdrop the Government of India executed various policy measures for promotion of indigenous production activity and support the growth of Indian Companies. This will bring huge opportunities for Company Secretaries to occupy a prominent position in implementing effective compliance system and advise the companies on company law and related matters. This will boost the confidence of new entrepreneurs in scaling up their operations in India. In my view The GOI should carefully plan a balanced growth of both organised and unorganised sector in India.

This e-publication is an attempt to gather in a lucid manner members views and opinions on role of Company Secretaries in rebuilding the economy in turbulent times, and exploring growth scenarios for expansion of the services of Company Secretaries.

I take this opportunity to present this e-publication and appreciate all the members, who sent their articles to ICSI COE as well as screening committee of researchers who selected the Articles for e-publication. My sincere appreciation to Dr. Sapna Malhotra and team COE, Hyderabad for bringing up this series which is most adaptable to the present times.

I also thank, CS. Ashish Garg, President ICSI and CS. Nagendra Rao, Vice President ICSI as well as Managing Committee Members of ICSI- COE for their support and guidance.

In the words of Ms. Sudha Murthy, Chairperson Infosys Foundation, "These are unprecedented times that require every section of the society to rise up to the challenge".

Sincerely

CS Devendra V. Deshpande
Chairman
ICSI COE, Hyderabad

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FDI – THE SILVER LINING

CS Mukul Wahie

Email-ID: cs.mukul.wahie@gmail.com

INTRODUCTION

The 30th day of January, 2020 was no ordinary day. India had a new visitor that day, one which would send the nation into a tizzy, locking down the country like never before. The day recorded the very first case of the COVID-19 infection in our country. Little did we anticipate how far this would go. When we cut three months ahead, India has recorded over 33,000 confirmed cases of the virus, which has so far claimed over a thousand lives. The Novel COVID-19 has been declared a Pandemic by the World Health Organization (WHO) as late as 11th March, 2020. The virus turned out to be lethal not only to human health, but also to the country's livelihood. Several migrant labourers have been rendered jobless, pilots are staring at unpaid months as commercial flight operations remain grounded throughout the country. It is during these times of crisis, that one regulatory filing caught the attention of our Government, which then decided to take charge of the situation.

THE HDFC ACQUISITION

In a regulatory filing to the stock exchanges, one of India's premier Housing Finance Corporation–HDFC Limited disclosed that the People's Bank of China owns 1,74,92,909 (or approximately 1.75 crore) shares in the Company, aggregating to 1.01% of the equity capital, as on 31st March, 2020. Akin to the Reserve Bank of India, The People's Bank of China is the Central Bank of the People's Republic of China. The benign acquisition made by the Chinese Bank set off alarm bells in the corridors of our Finance Ministry. Particularly in the wake of COVID-19, the state-backed Chinese firms have been targeting acquisition of a large number of corporates suffering from the global meltdown. For instance, the crisis-hit European nations are seeking funding in sectors ranging from airlines to hospitality, in the current scenario. Amidst the crashing economies of the global markets, the Chinese firms are taking a first-mover advantage by offering discounted deals to European companies, which are cash starved in this financial crunch. This present scenario has set the stage for swift acquisition of Indian companies, which are reeling as their stocks plummet into free-fall. Taking cognizance of the gravity of the situation, the Joint Secretary to the Government of India issued the Press Note No. 3 of 2020, under the aegis of the Ministry of Commerce & Industry, Department of Promotion of Industry and Internal Trade. As briefed in the press note, it was decided to amend the current FDI Policy

in order to curb opportunistic takeovers and acquisitions. For us to understand the gist of the defensive measures, it is necessary to have an overview of the legislative framework of Foreign Direct Investments in India.

FOREIGN EXCHANGE MANAGEMENT ACT, 1999

The Foreign Exchange Management Act, 1999 (FEMA) regulates the flow of foreign exchange in and out of the country, and sets the guidelines for its usage. The provisions of FEMA govern the holding and dealing in foreign exchange, export of goods and services, current account and capital account transactions. The Reserve Bank of India (RBI) was empowered to govern all the capital account transactions, irrespective of nature of investment. In this regard, the Foreign Direct Investment (FDI) into India was regulated by the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2017, as amended from time to time.

However, the Finance Act, 2015 brought in a clear demarcation to the regulation of foreign exchange between the Central Government and the Reserve Bank of India. Section 139 of the Finance Act, 2015 now authorizes the RBI to govern only those capital account transactions which involve Debt Instruments. The Central Government, through the Ministry of Finance is now empowered to govern all capital account transactions involving Non-Debt Instruments. The segregation of Debt Instruments and Non-Debt Instruments was notified by the Ministry of Finance on 16th October, 2019. The current legislative machinery governing FDI comprises of the following:

1. The Foreign Exchange Management (Debt Instruments) Regulations, 2019, notified on 17th October, 2019 regulates the investment made by a person resident outside India in debt instruments of an Indian entity. The Debt Instruments bring within its ambit several securities which are in the nature of debt, such as government bonds, corporate bonds (like debentures), borrowing by Indian entities through loans, American / Global Depository Receipts whose underlying assets are debt securities.
2. The Foreign Exchange Management (Mode of Payment and Reporting of Non-Debt Instruments) Regulations, 2019, notified on 17th October, 2019 prescribe the permissible modes of receiving payments for foreign exchange transactions, and the manner of reporting to the Reserve Bank of India. Schedule I to X of the Regulations prescribe the mode of payment for various types of investment, such as purchase of equity shares of an Indian company, investment in Limited Liability Partnership (LLP), and issue of Indian Depository Receipts (IDR). Regulation 4 prescribes the reporting of foreign exchange transactions to the RBI. For instance:

- Form **FC-GPR** is to be filed by the Indian Company within 30 days from the date of issuing Equity Instruments to a Non-Resident Investor;
 - Form **FCTRS** is to be filed within sixty days of the earlier of transfer of Equity Instruments or receipt / remittance of Funds;
 - Annual Return on Foreign Liabilities and Assets (**FLA Return**) is required to be filed by the Indian Company with the RBI within 15th of July, every year.
3. The Foreign Exchange Management (Non-debt Instruments) Rules, 2019–notified on 17th October, 2019, and issued *in supersession of*:
- a. *The Foreign Exchange Management (Transfer of Issue of Security by a Person Resident outside India) Regulations, 2017*; and
 - b. *The Foreign Exchange Management (Acquisition and Transfer of Immovable Property in India) Regulations, 2018*.

These Rules regulate the investments made by a person resident outside India in Non-Debt instruments(NDI) of an Indian entity. The Regulatory Authority empowered to govern NDI has now shifted to the Central Government, through the Ministry of Finance. The NDI include investments in:

- Equity shares of Indian Company;
- Capital investment in Indian LLP
- Contribution to Trusts;
- Acquisition, sale, or dealing in Investment Property
- American / Global Depository Receipts issued on the bases of underlying equity shares

It is pertinent to note here that any investment made on a non-repatriation basis is not considered as foreign investment, wherein the proceeds of sale investment is not flowing back into the host country.

Schedule I of the NDI Rules prescribe the quantum of foreign investment permissible in different sectors (through Sectoral caps for each industry), the sectors in which FDI is prohibited (such as lottery, gambling, chit funds, Nidhi company, real estate) and the mode of entry of FDI.

Under the Automatic Route, prior regulatory approval is not required for inflow of Foreign Direct Investment. Hence, the transaction is only required to be reported, in compliance with the FEMA Rules and Regulations.

However, under the Approval Route, the proposed foreign investment is required to attain clearance from the respective ministry which governs such industry or sector. To illustrate this with a few examples, the Ministry of Information and Broadcasting is required to approve any FDI in Print Media, Coal Ministry will require to approve any investment in Coal Industry, the Ministry of Civil Aviation will scrutinize the FDI proposal in Aviation sector. Under the erstwhile NDI Rules, an entity incorporated in Pakistan or Bangladesh, or a citizen of Pakistan or Bangladesh could acquire equity stake in Indian companies only under the Approval Route.

LAND BORDERS QUARANTINED

Taking cognizance of the steps taken by China's central bank in acquiring a higher stake in HDFC, the Department of Economic Affairs swung into action, notifying the Foreign Exchange Management (Non-debt Instruments) Amendment Rules, 2020 on 22nd April, 2020. In order to curb opportunistic takeovers and acquisitions, the Government reinforced the restrictions on the neighboring nations by substituting the proviso to Rule 6(a) of the NDI Rules. The amended Rules effected the following changes:

1. Entities of any country which shares its land borders with India, can invest in equity instruments of Indian companies only under Approval Route;
2. Citizens of any country which shares its land borders with India, can invest in equity instruments of Indian companies only under Approval Route;
3. Beneficial owners of any investor which is situated in a country that shares its land borders with India, can invest in equity instruments of Indian companies only under Approval Route;
4. Any transfer of equity instruments to an investor as described above, can be undertaken only under the Approval Route.

IMPACT ANALYSIS:

Under the new regime, any investor belonging to the following countries can now invest only after obtaining prior approval of the Indian Government: China, Pakistan, Afghanistan, Bangladesh, Nepal, Bhutan, and Myanmar.

Even if the investor is a resident of India, and if the Indian investee company has received a declaration to the effect that the beneficial owner of such investor is situated in any of the above countries, or is a citizen of any such country, then such investment shall flow in only after getting the necessary clearance from the Government.

The transfer of equity instruments to any such individual or entity who is situated in, or a citizen of the above countries will also be required to be given green chit by the Government.

This effectively puts in the big players in Indian startup scene in troubled waters. For instance, common household names like PayTM, BigBasket and Zomato are Indian entities which in fact derive a significant portion of investment from Chinese funds. Globally acclaimed Chinese groups like Alibaba and Tencent Holdings have infused millions of dollars into Indian firms such as Delhivery, Oyo Hotels, Policy Bazaar, to name a few. With this regulatory backing, now any further rounds of funding will face the scrutiny of the Indian Government before coming through to the companies. This presents a unique challenge to company secretary professionals as they serve as a vital link between the Board of Directors, Shareholders, and the Regulatory Authorities.

REBUILDING THE ECONOMY

In these unprecedented times of crises, the world economy has inevitably slipped into recession. According to a recent Trade Report released by the United Nations, the global economy is set to witness losses running into trillions of dollars of income, owing to the Pandemic. It is no surprise then, that this fact has been acknowledged at a national level by our leaders. In his interaction with the heads of each state, our Hon'ble Prime Minister, Sh. Narendra Modi has called for the country to gear up for attracting foreign investments from those companies which are likely to exit from Chinese shores. After the financial and human onslaught of the virus, several multinationals will be exploring the investment opportunities outside of China. In this scenario, it becomes pertinent for the corporates to saddle up for the ride ahead.

While it is widely known that India and China are the two largest economies in the world at present, foreign companies will be keen to explore the possibility of tapping into the skilled manpower, land availability, economies of scale, and flourishing markets that operate within this country. Apple, Microsoft, P & G are among the multinational giants which foresee weaker profits, on account of their exposure and dependency on China.

“If any company was thinking of moving, they’re now really exploring it or working on an executed plan. ”

Ethan Harris

Global Economist – Bank of America, Merrill Lynch

It is here that the Company Secretary steps in, exercising the capabilities of a Key Managerial Personnel.

Corporate Governance is one such tool, which builds the long-term value sought after by investors. Lack of effective Corporate Governance has led to the fall of the mighty large organizations throughout the years. The renowned consulting firm McKinsey determined that global institutional investors are likely to shell out a whopping forty percent premium to invest in corporates with superior corporate governance. Our prestigious institute defines corporate governance as *“the application of best management practices, compliance of law in true letter and spirit and adherence to ethical standards for effective management and distribution of wealth and discharge of social responsibility for sustainable development of all stakeholders.”*

To a potential investor looking to shift base from the grassroots levels in our country, Company Secretaries can develop and put in place a well governed corporate machinery, that will supplement the organizational efforts towards attaining its objectives. In order to ensure quality of Corporate Governance, the Company Secretary needs to implement these fundamental principles:

1. Compliance of the Law, in Letter and Spirit

With regard to the industry in which the company operates, it is required to comply with the legislative machinery in force at the Central and State levels. A company will do well not only to meet the statutory requirements, but also to go beyond what is expected. The Company Secretary plays a key role by staying updated with the relevant provisions of the Companies Act, FEMA Regulations, Listing Compliances and the local statutes prevailing, such as Shops and Establishment Licensing. Furthermore, companies may also require to comply with specific environmental laws, and industry-specific compliances, on a continuous basis. Even in the light of current restrictions imposed by the amendments to FDI Policy, sources in the Indian Government have stated that investment proposals in non-sensitive sectors will be fast-tracked by the Govt. Professionals like Company Secretaries play a key role by ensuring the applications submitted to the regulatory authorities are complete in all respects, and comply with the statutory requirements to facilitate such benefits.

2. Enhanced Transparency and Disclosures

The management of the Company is expected to present detailed, transparent and accurate reporting to foster informed decision making. The accountability and transparency of the Board of Directors in managing the company’s funds, investing the earnings of the company, entering into related party transactions at arm’s length pricing need to be appropriately and adequately disclosed to the stakeholders. The financials

should always present a true and fair picture of the Company's state of affairs. Companies having in place a robust whistle-blower policy, provide comfort to the prospective investors, who are more likely to invest into an organization with enhanced transparency.

3. Effective Board Management

As elucidated time and again, the Board of Directors have been regarded as the stewards of the Company. Frequent and regular meetings of the Board provide an opportunity to keep abreast with the latest developments in testing times. Holistic participation of the Board members can facilitate the company to capitalize on the extant foreign investment opportunities, through effective participation. The Company Secretary role is critical in contributing to the success of Board processes, by circulating detailed agendas to provide the necessary information for decision making. It is the duty of the Company Secretary to preserve the confidentiality of Board-room discussions, and to record the deliberations and decisions taken by the Board in the Minutes of every Meeting. It is through a continuous process of Board Evaluation, Training and Development that the Leadership of the Company remains in safe hands.

4. Independence of the Board of Directors

An effective Board Composition ensures healthy participation of Board members in the affairs of a Company. A balanced Board comprising of Executive, Non-Executive and Independent Directors serves the interests of the Company in ensuring that the views of one individual does not undermine the Board as a whole. An Independent Director lends an objective view to the decisions required to be taken by the Board. The independence ensures there is no actual or perceived conflict of interest in the Board processes. To an outside investor, a well-managed Board equipped with independence and objectivity lends much needed assurance.

5. Foresightedness for Business Opportunities

As a Key Managerial Personnel, the Company Secretary is tasked not only with ensuring the routine compliances, but also to anticipate the business requirements of the Company, and facilitate the action required in this regard. For instance, a possible acquisition by a foreign investor may spark a slew of compliances in the near future. The requirements to ensure adequacy of authorized share capital, alignment of the objects of the Company with the desired venture, securing the necessary licenses and permits to embark on the venture are areas the Company Secretary can specifically

address and foresee. This will give the Company a head-start in making use of the available business opportunities.

6. Sustainable development of all Stakeholders

Without any reasonable doubt, shareholders are the ultimate owners of the Company. But the success of an organization largely depends on the sustainable development of not only its shareholders, but the entire gamut of persons who hold a stake with the Company. Adequate and timely compliance fosters a relationship of trust with the Regulatory Authorities. Treating employees with respect, dignity, and rewarding their efforts motivate them to add value to the organization. In these harsh times of crisis, the employees look up to the companies which provide them livelihood to sustain through the economic meltdown. Providing customers with quality products and services at competitive prices retains the market share of the company, during the global meltdown. Amidst the COVID-19 crisis, thousands of daily wage workers are left stranded and impoverished, without any food or shelter. Reaching out to them with financial or material aid will be a step forward in the area of Corporate Social Responsibility. The interests of each stakeholder are to be borne in mind by the company at all times.

CONCLUSION

These are testing times for the Indian Economy. Corporates are facing staggering losses as their stocks continue to plummet. In order to curb opportunistic acquisitions, the Government has stepped in to put a check on the investments flowing in across the national borders. While the weather appears to be turbulent for the journey ahead, it is time to fasten our seatbelts. For even a flat line without the highs and lows of a heartbeat indicates loss of life. It is time for us to rise to the occasion. As management professionals, Company Secretaries play a pivotal role in ensuring good Corporate Governance in the organization structure and practices. A well governed organization will always attract potential investors who are looking for lucrative avenues for running their operations. The curbs placed on direct investment from neighbouring countries offer a blessing in disguise. This is the time to strike while the iron is hot. The multinational giants in the process of moving out from virus-hit China, are eyeing a potential investment in India. By aligning the principles of companies with the best corporate governance practices, the Indian corporate sector can surely go a long way in rebuilding the economy.

In the words of the Institute of Company Secretaries of India,

“Together we can, Together we will.”

REFERENCES:

Business Standard: Coronavirus impact: India and China may escape global recession,

https://www.business-standard.com/article/current-affairs/coronavirus-impact-india-and-china-may-escape-global-recession-says-un-120040100083_1.html

Business Standard: Govt to fast track Chinese investment proposals after FDI changes,

https://www.business-standard.com/article/economy-policy/govt-to-fast-track-chinese-investment-proposals-after-fdi-changes-report-120042500880_1.html

Bloomberg: China’s Corporates Are Gearing Up in Europe for M&A Bargains, Online

<https://www.bloomberg.com/news/articles/2020-04-07/china-s-corporates-are-gearing-up-in-europe-for-m-a-bargains>

DIPP

https://dipp.gov.in/sites/default/files/pn3_2020.pdf

Government of India

<https://www.mygov.in/COVID-19>

HDFC Bank: Shareholding pattern for the Quarter ended 31st March, 2020, Online

https://www.hdfc.com/sites/default/files/2020/04/Reg31_ShareHoldingPattern_31032020%20WEBSITE.pdf

Los Angeles Times: As coronavirus cripples global supply lines, more US firms looking to

<https://www.latimes.com/politics/story/2020-03-04/spreading-coronavirus-tears-apart-global-supply-chains>

Times of India: Be ready to woo companies quitting China, PM Modi tells CM's, Online

<https://timesofindia.indiatimes.com/india/be-ready-to-woo-companies-quitting-china-pm-modi/articleshow/75418023.cms>

**COMPANY SECRETARY: A CATALYST AND THOUGHT LEADER IN THE
CURRENT CHANGING BUSINESS SCENARIO**

Dr. (CS) Bhavesh A. Kinkhabwala

Email-ID: bhaveshmak@gmail.com

*Crisis moments create opportunity. Problems and crises ignite our greatest creativity and
thought leadership as it forces us to focus on things outside the norm.*

— Sam Cawthorn

I. Introduction:

What to say incrementally for the prevailing turbulent time with a backdrop of COVID-19 pandemic situation? Suddenly for the major parts of the globe, the mankind found surrounded with a situation that was never expected, imagined and seen unless in a movie. But, the fact remains a fact and there is no way to circumvent the reality. The world economy is largely disrupted due to this unforeseen natural calamity of COVID-19.

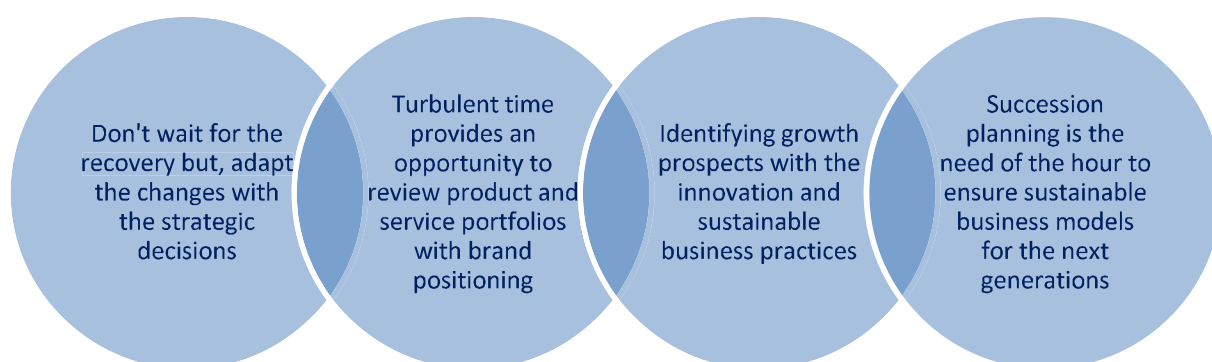
As (Ogivly, 2020) observed, COVID-19 pandemic situation has greatly affected the economies of the several countries across the globe not only due to lockdown and stopped industrial operations but, also it will lead to the long lasting impact on the economy as the purchasing behavior of people has been shifted from the 'life style' maintenance to the 'living' the life with purchasing for bear minimum requirements. If these turbulent times prevail for a longer period, then there is every possibility that people will get used to living differently with different consumption patterns. New dimensions of consumer behavior will evolve and most of the brands shall be posed with the challenging task of maintaining relationships with consumers with a major use of virtual contact tools. The outbreak has nudged many consumers to opt for the new pattern of 'living' which they have very marginally used or for a certain segment of the society never used before viz. online medical consultancy, online education, work from home, audio-visual means for the meetings, digital entertainment services, online banking. Economy is going to be drifted with all changes in this scenario.

II. So, what should be the stand:

There is a popular saying which goes like "You cannot control what happens to you, but you can control what you do about it". As rightly said by Dr. Robert Schuller "tough time never last but tough people do", when the society is dipped in the turbulent time, role of government, apex segment of the society supported by the society at large itself are the

glimmers of recovering from the turbulent times. Corporate sector and Professionals invariably occupy the apex segment of the society, and a lot of interventions are expected from them. The emergence of turbulent times due to present COVID-19 pandemic situation has not left any segment of the society untouched. The role and contribution of professionals is definitely a major source of support to recover the economy. Company Secretaries (CS) being the Key Managerial Personnel and backbone of corporate governance, invariably act as catalyst in resurging the economy with reinstating the corporate sector contribution to the economy.

As said, one has to accept the reality. CS can advise the entrepreneurs to be proactive in sensing the threats and opportunities in the backdrop of predicted competitive forces acting on the business as follows:



(Figure 1: Advisory role)

(Lane & Down, 2010) through their research concludes that in turbulent times Peter Drucker’s concept of management as a social enterprise forms a Core framework that can be used within complex situations to agree objectives through dialogue.

III. Post the COVID-19 situation and role of Company Secretaries (CS):

As the situation and time demands, MCA issued appropriate notifications for conducting Board Meetings, general meetings through audio-visual means so as to ensure protection through social distancing. Since CS is the single point solution to the all the corporate compliance requirements, they have to proactively adapt themselves to the new age IT technology and applications of Artificial Intelligence at workplace. However, as said and popularly known by all, “every dark cloud has a silver lining” hence this crisis situation

opens up several other avenues and opportunities for CS to better serve their clients, employer and establishments.

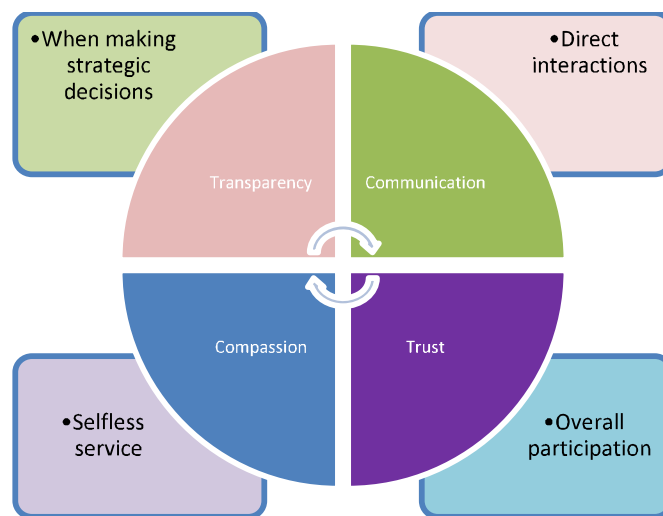
Business continuity will affect due to interruptions in supply-chain and demand patterns and therefore, internal rotation of funds as well as external funding patterns may affect significantly and in such a situation alternative funding sources shall be the major arena of hope. Company Secretaries is emerging as a thought leader with solutions to help their clients or employer establishments in negotiating, with the lenders, banks, financial institutions, with new loan eligibility criteria, revised terms for credit facilities. CSs shall be the important facilitator in discussing, dealing and negotiating with external stakeholders.

Interruptions in supply-chain, delay in the turnaround time in serving the customer, clients may affect in initial stages and while the establishments are rejuvenating, brand image may affect and in such a situation, where CSs can take-up an additional role of brand ambassador. CSs can attend various internal and external stakeholders, media and to respond to queries and grievances if any. Proper communication is the key to manage any relationship and CSs being expert in drafting can be a valuable support in providing various drafting inputs to disseminate with the stakeholders and media and represent the concern and future plans of the establishment and thereby reposing the trust and confidence in the establishment. Such support from CSs shall also help a lot in maintaining the share prices with stock exchanges.

Mental stability, calmness, overcoming personal problems in turbulent time is a starting point in regaining as well as maintaining motivational level amongst the workforce. CSs can help a lot in taking counselling sessions for the employees. Employee Branding, as a source of strategic competitive advantage, is the process by which employees internalize the desired brand image and are motivated to project the image to customers and other organizational constituents (Miles & Mangold, 2005). CSs can be a catalyst for creating Employee Branding as they have been following all regulatory and other governance measures, with a strong ethical base and being responsible for working with integrity, in the organization, occupies the position of a role model for the employees / staff in this time of crisis.

CSs can provide services help a lot by drafting Business Continuity Plan (BCP) and further provide assistance in implementation of BCP. A business continuity plan (BCP) is a document that outlines how a business will continue operating during an unplanned disruption in service. It's more comprehensive than a disaster recovery plan and contains contingencies for business processes, assets, human resources and business partners – every aspect of the business that might be affected (IBM, 2019).

CSs being a corporate leader should demonstrate following traits of thought leaders during these turbulent times:



(Figure 2: Leadership traits in turbulent times)

IV. Role of the ICSI in the growth of the Profession:

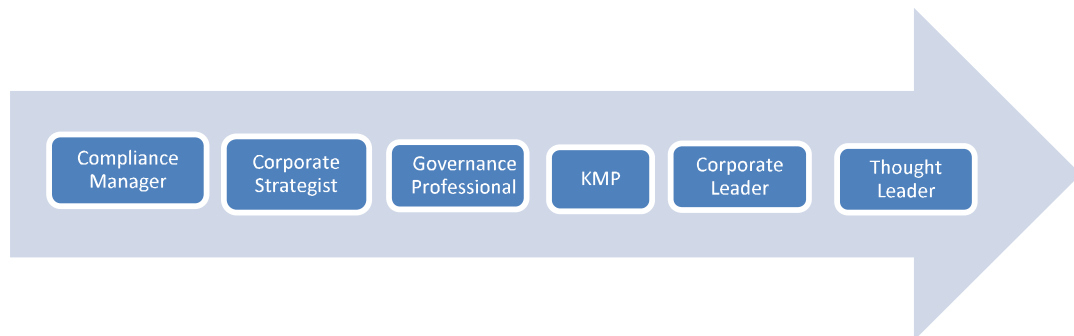
The ICSI has been continuously putting efforts to expand its contribution towards developing the good corporate governance measures. How the corporate governance has been established has become a source of pride for the ICSI, CS profession and the corporate sector. For the students and members of the ICSI, there is a new scope for introducing a new elective course, certificate course on “sustainable business strategies in turbulent times”. During the lockdown situation, technology and its prudent use for imparting distance education, is the new arena for the way of imparting coaching to the students. However, challenge is to make the distance education more interactive, interesting and fruitful for both the students and the faculties. For the members of the ICSI, during the turbulent time, use of technology, meetings through video conferencing and incorporating Artificial Intelligence tools in work schedules can serve for the adequate reporting, fulfilling compliance needs and ultimately contribute partly in the corporate governance requirements. ICSI has started using webinars at large scale which is a

proactive step in imparting training and sharing knowledge in a very cost effective way and with ease at both the ends. ICSI has proactively interacted with the various regulatory authorities in releasing relaxations and extensions in various deadlines for the compliances, waiver of penalties and further amending relevant rules and regulations so as to lessen the adversities of the COVID-19 pandemic situation.

Still there is a huge scope for the ICSI to take up the role of a facilitator in serving the larger community of people.

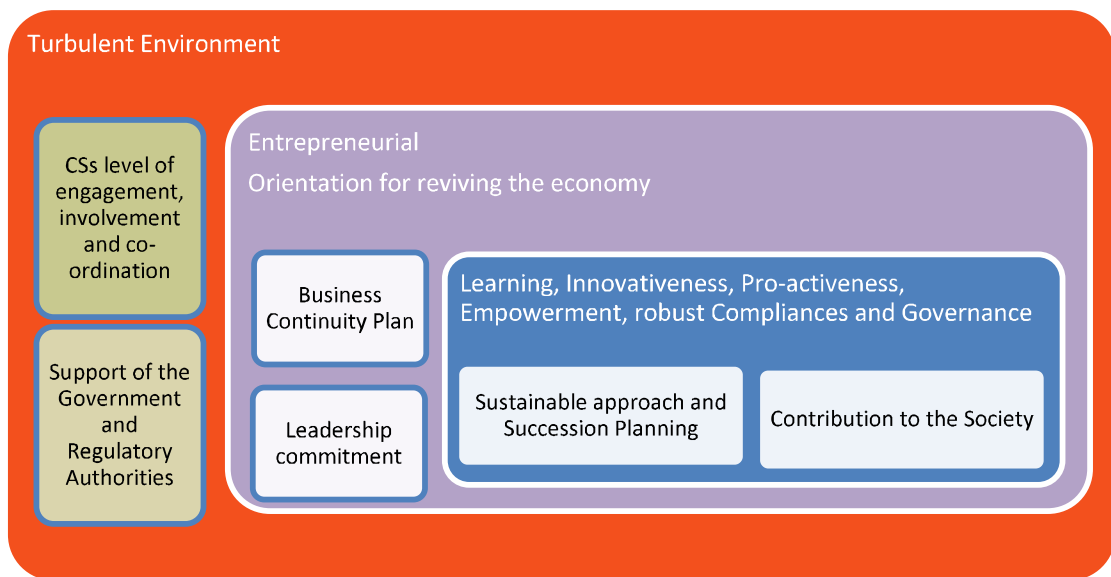
V. Path ahead:

Company Secretaries presence has evolved from being: Compliance Manager → Corporate Strategist → Governance Professional → KMP and the next level and milestone could be the “CL”-“Corporate Leader”. A Corporate Leader while expanding its horizons, can create a bigger impact at the macro level by changing the world around him / her and also helping others to do the same. In the next stage a CS transforms from being a Corporate Leader to a Thought Leader. Thought leadership is sharing new ideas and insights from one generation to the other generation. It’s all about giving a legacy to the others and to the next generation for the maintaining sustainable standards of living.



(Figure 3: evolution path) (Kinkhabwala & Gor, 2018).

Role of CS as a thought leader for revival of the economy during this turbulent time is portrayed through the following conceptual framework:



(Figure 4: A Conceptual framework)

As portrayed in the above conceptual framework, CS level of engagement, involvement and co-ordination during the turbulent times, can help to support the Government and regulatory authorities, and entrepreneurs for the revival of the economy. Enterprises can avail the expertise from CS by inducing attributes of Continuous Learning, Innovativeness, Pro-activeness and Empowerment and further, by implementing robust Compliances can ensure effective Governance. CS can support enterprises by introducing and implementing Business Continuity Plan, nurturing leadership commitment and further can help enterprises in inculcating sustainable business practices and approach through succession planning and thereby can contribute not only in reviving the economy but, can contribute to the society at a macro level.

VI. Conclusion:

The COVID-19 pandemic situation has already made a massive impact on the economies around the globe by causing an “instant shock” to all sectors including the government. Stakeholders, who have maintained buffers in resources, are able to absorb the “shocks” but, once the turbulent time is over and how the economies will react in the post-crisis situation will be the actual test of time. The present turbulent situation has coined altogether novel challenges for the stakeholders in an economy. It’s high time for professionals to observe, study and analyze the situation, apply knowledge, expertise and nurture the sustainable approach amongst various stakeholders through offering to counsel, imparting training and extending thought leadership. There is huge scope for the key role of

a Leadership in serving as the trustee so as to leave a better inheritance for future generations to come. Are we prepared to take up the new challenge:

References:

IBM Services (2019), ‘Adapt and respond to risks with a business continuity plan (BCP),

<https://www.ibm.com/services/business-continuity/plan>.

Kinkhabwala Bhavesh A. & Gor Ravi Dr. (Jan, 2018), Antecedent of Thought Leadership – Integrating Western Views, Spirituality and Adi Shankaracharya to Transcend from KMP to a Thought Leader, *Chartered Secretary Journal*, page nos. 49-53

Lane, David & Down, Martin. (2010), The art of managing for the future: Leadership of turbulence. *Management Decision*, *Management Decision* Vol. 48 No. 4, pp. 512-527. 512-527. 10. 1108/00251741011041328

Miles Sandra Jeanquart, Mangold W. Glynn (April 10, 2005), Positioning Southwest Airlines through employee branding, *Business Horizons*, 48, 535—545. DOI: 10. 1016/j. bushor.

Ogivly (2020), Making brands matter in turbulent times: How to steer brands through a

<https://www.ogilvyasia.com/uncategorized/making-brands-matter-in-turbulent-times-how-to-steer-brands-through-a-crisis>.

Span Scott (2020), Lead or Fail: Successful Leadership in Turbulent Times, (Retrieved on

<https://tolerosolutions.com/lead-or-fail-successful-leadership-in-turbulent-times/>

DIMENSIONS OF GROWTH PROSPECTS FOR COMPANY SECRETARIES IN PRACTICE: A WAY FORWARD

CS DEEPAK P. JAIN

Email-ID: deepak@pozitivpartners.com

“It is very challenging. But also, an amazing opportunity to unlearn, relearn, and test our capabilities and value systems” - Sudeep Ralhan, Walmart Labs

I. INTRODUCTION

The whole world is amidst a tragic situation without having certainty as to when will the impact of the ‘COVID-19’ pandemic come to an halt, if not completely get eradicated. Unanticipated twists and turns will be revealed with each new cycle, and we will only have a complete picture in retrospect. The number of people infected by the COVID-19 virus continues to rise. The way it is spreading from one continent to another, feels more like we are waging a long-term war, against an invisible enemy, which is why besides grief, the other emotion we are experiencing is fear.

As rightly said by Sudeep Ralhan, the Head of the Human Resources of Walmart, this is an opportunity for all of us to unlearn and relearn. It was very important to unlearn what we otherwise had thought was the rule of thumb, to let go our notion on certain aspects, to let go our rigidity and to adapt to changing situations and be a part of a newer world. Before these tragic days, a Company Secretary in Profession would have adopted the strategy of advising his clients by the general understanding and not going in depth of the situation. What we should unlearn are the un-productive means of working, traditional ways of managing work, unlearn the comfort zones - so that we can move forward for newer ways of working with focus on efficient work processes, technological adoption in day-to-day work and learn soft skills for handling the next normal.

It is time to accelerate your learning curve with new skill sets and apply the new learning to our Practice and help clients in adopting these techniques. This article is an attempt to elucidate the positive ways of adapting to the change happening around us.

II. NEED FOR PROGRESSION IN LEARNING CURVE

A Company Secretary in Practice was always proactive and unshaken by any change, let it be regulatory, climatic or economic change. We have seen that during the recession in between 2008 and 2009, the scope and efforts of any Professional did not get impacted. A Practising Company Secretary not only guides on the compliance and regulatory affairs of

the companies but also has an expertise to advise on various matters related to business planning and decision making. PCS also acts as a strong link between the industry and government to represent the various business matters of the companies. He/She is the person who can think through the eyes of a Businessman. A Businessman will only think through defence mode on how he can survive his business and take care of his employees, but a professional can understand the businessmen's situation beyond his horizon without being influenced by fear and can guide him with optimal solutions. He should look beyond and take the positive aspects of this, as rightly said by TN Hari, Big Basket "Things that once took months, are now being carried out in a matter of days".

And that is true, professionals who did not have time to attend important conferences are now able to attend Webinars at the click of the button on a daily basis and without having the need to travel and spend time on logistics.

It is noteworthy to understand the Current challenges, most small and medium enterprises professionals are facing during this lockdown which includes need to increase efficiency in supply chain and operations, customers demand for reduction in prices, manpower planning, dependency on Govt departments and Tribunals who are not well equipped to working on digital platform and lack of accurate of data/information from clients. However, technology can assist and help overcome these challenges. It is the time to learn newer techniques and methods and adopt to modern technology in the workflow and interactions with the clients so that the information flow is automated, with lesser dependency on staff. The Registrar of Companies are geared up vastly by making the compliances online, however the NCLT and NCLAT are not yet abreast with the latest modern technology and not able to accept applications and appeals, and hearing of the cases through video conferencing which few High Courts have started. A change in working style by these authorities is the need of the hour as it will boost the confidence of Company Secretary in Practice and enable them to advise their clients for clearing the pendency of their cases lying in the courts.

What is important for a CS in practice is to create awareness amongst its clients on the use of technology tools and empowering the Industry and the clientele whom he serves by putting his best efforts and guiding them in the right way. He should use digital and technological tools and make his work flow smoothly without hampering the continuance.

For eg. the storage of data can be managed on the cloud with the use of Google drive, drop box or One drive. A PCS can communicate and conduct meetings with his team and clients through video based tools like Skype, Google Hangouts or Cisco WebEx to name a few.

III. DIMENSIONS OF GROWTH PROSPECTS

We shall now address the various dimensions of growth prospects which a Company Secretary in practice can adopt post the lockdown and how he/she can bounce back from the impact. Lots has been said about the pandemic, measures to control and actions of the government and the discussion can go on and on with critical introspection. A PCS should take a progressive step forward, with optimistic thinking and develop an awareness of the environment - economic and social. A Company Secretary in Practice should spearhead with confident approach while dealing with his people and various stakeholders. As it is rightly said, ‘this too shall pass’, yes, this phase shall pass and we need to be prepared for the next steps to revive and uplift our practices. It is advisable at this stage to find solutions by brainstorming on developing new ways of working and prepare ourselves for bringing in revolutionary change in our planning and managing style.

IV. THE 5 R’S FRAMEWORK

The diagram below explains the 5R's approach to analyse the plan of action for the next level of work for PCS

(Mckinsey, 2020)



a) **Resolve**

Address the immediate challenges that COVID-19 represents to the workforce, clients and partners.

Workforce – Be aware that the current mix of Work from Home (WFH) and social distancing, combined with economic anxiety is driving stress and reducing productivity. In such scenario, acceptance of WFH realities such as shift in timings, respect to the women team members, availability of time of the team should be accepted and rigidity of scheduling should be passed by.

Clients - Make the clients aware of the regulatory relaxations given and how they can benefit from them, make them feel confident that there is time extension given by the Government and educate them as to how they can utilise the opportunity. Also, on the various schemes announced like the Loan moratorium, CLSS scheme and other regulatory

relaxations are blessing in disguise which will help them to sail through these tough times. Establish a rhythm of updates & engagement, offering more frequent updates, targeted content and individual outreach.

Partners – We deal with partners like Banks, content & database providers, government authorities and our Institute. Be in touch with them and evaluate through the pulse of these partners which will impact your practice. Being a part of the webinars organised by the Institute will keep you updated and aware of the changes brought in by the Government.

b) Resilience

Address near-term cash management challenges, and broader resiliency issues. Cash management challenges will be faced by all irrespective of a manufacturer, trader or a service provider. But the Top 20% of organisations that emerged from the recession are called the Resilients.

Tip: Set up a cash war room / prioritize cash spending quantum and timing to manage the tough times.

Teams seeking to boost Resilience during COVID-19 need to learn lessons from the companies that survived and thrived in the last recession. Two words that define their success: Speed + Discipline.

Speed - Think of speed in terms of delivering services to clients before their expected time, be a change in your organisation. Take early and hard moves to grow on productivity and preserved growth capacity.

Discipline - Look for discipline with your work as a leader and set an example for the team to work with the same discipline. Be mindful of the fact that WFH should not affect your overall time spent on the work, the timing can change but the overall time for official work should not be reduced.

c) Return

Create a detailed plan to return the practice back to scale quickly.

Firms should be prepared for the ‘return’

Look for some of the following -

-
- Health response ready
- Increased Tests with fast turnaround
- Relaxation in Stay at Home orders

Then start thinking of -

-
- Reassuring clients
- Restore to normalcy by either reinstating or revising the past processes. The process change methodology and adopting to technology discussed initially will be very powerful ways to return to the next normal.

d) Reimagination

Re-imagination of the “next normal” –what a discontinuous shift looks like, and implication for how the organisation should reinvent.

Be clear of how the regulatory and competitive environment for the profession will shift. The speed and effectiveness of the country’s response would reshape the political and economic response globally. The shift in economy from a spending economy to resilient will have an impact on the fee scales and expectation of the clients. Before the client asks, give them a concession in the fee and give them a comfort of a value partner for the future.

e) Reform

- Few reform measures have been announced by the government, but there is more to come. Keep updated with these measures and optimise through a cost – benefit analysis for the clients and help them make a calculated decision.
- Create a Business Continuity Plan for your organisation as well as for the clients.
- Don’t cut costs due to Panic, focus on making efficient use of resources which are available.

V. CONCLUDING REMARKS

We always wanted to take some time off from our work and spare some time with family and all our wishes have now come to life. Let us make the best use of this blessing in disguise and be a differentiator and come back stronger than what we were and collectively fight this disruption.

References

1. TN Hari, HR Head of Big Basket on a webinar on Your story.
Link: <https://yourstory.com/2020/04/opportunity-to-relearn-cisco-webinar>
2. COVID-19: Briefing note (March 2020) by McKinsey & Company.

COMMANDMENTS OF GOOD CORPORATE GOVERNANCE

FOR ECONOMIC REVIVAL

CS RAVI SACHAN

E-mail ID: ravisachan@icai.org

I. INTRODUCTION

In these turbulent times, effective corporate governance is essential. It improves transparency, accountability and viability. Company Secretaries must not only act responsibly and reasonably but also be in a position to demonstrate that they have done so. Those who do not may be exposed to personal liability and criminal sanctions in addition to the adverse impact on the business and reputation of the company. In this article the author explicates on commandments of good corporate governance & best practices that board could adopt to ensure the business continuity in the turbulent times. Company Secretaries are responsible to ensure that these commandments are followed for each company by a person who is acting as a director of more than one company in a group.

II. COMMANDMENTS OF GOOD CORPORATE GOVERNANCE

At the heart of good corporate governance for economic revival, should be the following commandments: -

1. Have frequent Board Meetings and maintain board minutes

Since arranging meeting in current circumstances is impractical, it can be done alternatively with the help of video conferencing so that the business and management of the company can be discussed at length and on regular basis with the directors. Ensure the presence of quorum and approval of directors on resolutions should be recorded properly.

The minutes should document the manner in which the directors have fulfilled their duties. This includes the fiduciary duty to act honestly and in the best interests of the company. Directors must refrain from benefitting from any conflict of interest. Their duties must be discharged with the skill and care necessary for the pursuance of the best interests of the Company.

2. Risk Management

Risk management is essential for every company no matter the size. The process involves identifying potential risks and limiting the potential exposure of your business. However, depending on your specified industry the degree of risk can vary. Accordingly, Company Secretaries should ensure: -

- That the risks to third parties and the external risks to the company are kept under regular review.
- The risk of failure to comply with applicable laws and regulations is one of the risks that should be included in this assessment.
- If the risk is anticipated it should be dealt with swiftly in order to minimize any damage to the company.

3. Budget and management accounts

Ensure that the Company Secretaries receive updated budgets and appropriate management accounts on a regular basis.

A company is required to maintain adequate accounting records to: -

- Ascertain the transactions of the company;
- Report the financial position of the company;
- Enable the directors to review financial statements or directors' reports;
- Enable the timely audit of financial Statements.

In accordance of the above all books and accounts should be kept up to date and steps should be taken to rectify any errors & whenever necessary external assistance may be taken.

4. Maintain statutory books and ensure returns are made on time

Statutory books must be kept at the company's registered office within the State and available for inspection for the members of the company. But during this turbulent times Company Secretaries should regularly scrutinize statutory books maintained through online portals.

Books include: -

- Register of members
- Register of directors and secretaries
- Register of allotments and transfers
- Register of beneficial interest
- Register of director's interest in contracts made by the company

5. Review viability

Ensure that the viability of the company is reviewed by the Key Managerial Personnel and that a plan is adopted to deal with all situations as they arise. A clear time-line for the review of the progress of the company should be agreed and observed. Company Secretaries should maintain updated budgets, projections and management accounts to keep informed of the current financial and trading position of the company. Company can take

certain long term financial decisions and may engage external professional agencies to prepare contingency plans for improving the current financial and commercial trading activities of the business.

6. Communicate with key stakeholders

The mentorship of the Board members coupled with their diversity and depth of experience can positively contribute towards the growth of the company in worst of the situations. The Board must be fully engaged with major shareholders and other stakeholders to share their vision and strategy to rise out like a phoenix. For successful implementation of the Board's vision in adversity, the CEO and the management team will have to shore up the resources keeping in mind the strict limitations on physical movement of people.

It is essential to maintain regular communication with major creditors and obtain their support for the continuation of the company. The Board must liason and network with the sectoral regulators and governmental agencies and obtain timely guidance from these authorities which will facilitate the company to navigate better through choppy waters.

The challenging economic conditions have alerted the board members to be vigilant about the prospective regulatory changes and to quickly respond and reflect and even staunchly resist any deviations from conventional wisdom.

7. Financial Continuity and Going Concern

The FY2019-20 has not been a great year for many companies. The last quarter has will close soon but with a shadow of an overall gloom and doom. The year-end audits is at a fairly advanced stage. The Board must constantly watch out for any early warning signals that may put their going concern belief to the most stringent test and work with the management to prepare and update business forecasts on a real time basis. It is essential that the board members should be given frequent briefing on the company's indebtedness, the bank financing, lines of credit, liquidity risks in short term and work with the management to proactively secure the liquidity needs.

Make sure that as a company secretary consider all insolvency options for the company: -

- Schemes of Arrangement
- Examiner ship
- Liquidation
- Receivership

The Company Secretaries can seek a complete overview on corporate insolvency options on the IBBI website.

8. Supply Chain Disruption

With economies affected globally, there is an obvious crunch in the supply of raw materials and components whereas the demand remains constant, if not inflated by the perceived fear of absolute breakdown of the economic cycle. The security of the supply has been compromised due to various reasons like source of supply being a COVID-19 affected area and apprehension of spread of the fatal virus in transit. This has impacted the supply chain and more crucially the life cycle of product manufacturing. The disruption at the first rung of supply, say for instance raw material, has a domino effect – impacting each step - work in progress, finished goods, further value addition to finished goods, if any, packing material inventory and lastly the ultimate use of product whether as a commodity for end use as a component for other OEMs.

The board and management need to respond to the crunch in supply chain and the dynamic circumstances for sustainable business.

(a) Contractual issues

It would not be uncommon for COVID-19 situation to be construed or claimed as a Force Majeure event or even leading to impossibility of performance i. e. frustration of contract, depending on the contractual terms. However, the key for the Board of Directors would be to find alternatives for sustainability and negotiate support, in case such events are triggered under the contract. The Board should not assume or adopt adversarial attitude or strategy and ensure continuity of fair and long-term relations with operational stakeholders. In hindsight, these turbulent times will certainly lead to careful crafting of the commercial contracts reducing the dependency on the boiler plate clauses.

(b) Effective Planning

In line with the national motto to deal with disasters – Mitigate, Prepare and Respond, the Board in consultation with the management must assess the supply chain and logistical risks in order to come up with a mitigation strategy and plan to effectively tackle such risks, set milestones to ensure preparedness and plan for respond in case of adversity.

(c) Resetting the Goals

Company Secretary should reconsider its financial and operational capabilities as well as key performance indicators, by taking into account its market demand and manpower budget. It may be helpful to decentralize non-essential decision making with respect to supply chain related functions as well as cross-training personnel to fill for the vacant positions.

(d) Long Term Sustainability

From a forward looking perspective, the current times offer a golden opportunity to the company secretary and management to spend some time on making their supply chain ecologically resilient.

(e) Be the Leader

From an altruistic perspective, the company secretary may also encourage their companies to share their best practices for disaster management in public domain for others to emulate.

9. Data Privacy considerations

Unscrupulous dissemination of sensitive company data can have fatal repercussions. However, under remote working circumstances, maintaining control over data, especially unpublished price sensitive information, might pose certain barriers. The Boards may consider implementation of the following practices:

(a) Use company protocol for sharing data

It is suggested to ensure compliance with company protocol on data sharing. In case the company does not have any such policy in place, the Board along with management inputs could develop the policy pointers for ensuring safety of data, such as restricted use of WhatsApp or other social media or communication platforms for sharing sensitive data.

(b) Updating information technology and communications system

Information technology plays a crucial role for employees in their day to day working. It is recommended for the companies to ensure that the employees have adequate IT support and have the bare minimum facilities like anti-virus, VPN (virtual private network), etc. to ensure the integrity of confidentiality and reasonably pawn off cyber attacks and data phishing.

10. Disclosures – mandatory and otherwise

- One of the most successful strategies of risk mitigation is a prompt and measured disclosure. In light of existing and emerging uncertainties, it would be the most appropriate to take a more conservative approach about the prompt disclosure of all risk factors and reservations that intimidate the business models.
- No Board is blessed with magical wand to resolve all issues at all times. However, the stakeholders are more than likely to appreciate and respect an honest approach of disclosure of the efforts being taken by the Board to address the problem or mitigate the risk.
- The Boards of listed companies have to be mindful of the mandatory disclosure requirements e.g. prompt and comprehensive disclosure of occurrence of all

material events under the SEBI (Listing Obligations and Disclosure Requirements) Regulations 2015 or the unpublished price sensitive information that would impact price discovery of its securities, under the SEBI (Prohibition of Insider Trading) Regulations 2015.

- In order to determine price sensitivity and materiality, the Boards must seek timely legal counsel for a thorough commercial and legal risk analysis to discern actual risk from potential risk and craft the disclosure statement under company secretary guidance.
- Most Boards prefer to follow the precedents. However, the Board must ensure that the form does not obscure the substance of the disclosure.
- The Boards must guard themselves against the temptation of limited or selective disclosure. Companies must not indulge in such a practice and must provide full and fair disclosure to ensure protection of investors' interest.

III. ICSI CONTRIBUTION IN REBUILDING ECONOMY

"When the going gets tough, the tough get going!"

Work from home, curfews and lockdowns across cities, nations and continents have changed our thought process and approach towards life.

While the economy has taken a plunge, the bears are pulling down the stock markets deeper by the hour and even continuity of business is threatened, the real mantra for any corporate would be to stand by its conviction of purpose and sustainability. ICSI being a statutory body can play vital role in rebuilding economy.

Some of suggestive measures: -

1. Facilitating and undertaking year end audits

The financial statements and auditor's report are the crucial investor report cards which have a bearing on the fate of the company. Given the proximity of current events to the end of financial year, the companies must not only prepare for the annual statutory audit exercise as usual, albeit this time round also consider the eventuality of the audit being conducted in a hybrid manner, which could mean a part of audit being done remotely with documents uploaded in the cloud. This exposes the company to potential data breach and compromised audits. The Boards may consider some of the following measures to mitigate these issues:

(a) CSAS

Auditing Standard from CSAS-1 to CSAS-4 notified recently by ICSI entails more checks to be carried out by the secretarial auditors. The ICSI's guidance notes on ICSI Auditing

Standards were released. In spite of Work-From-Home regime enforced on all organisations, the secretarial and legal teams will have to quickly grasp to this new challenge and meet the secretarial auditor expectations.

(b) Keep up with ICSI advisory

The Institute of Company Secretaries of India (ICSI) is expected to release advisory on dealing with COVID-19 and its impact on conduct of secretarial audit assignments. The Audit Committee as well as the Board should familiarize themselves with these new procedures and associated risks so that secretarial audits can be planned accordingly.

2. Avoiding Ethical Traps

- The primary purpose of the Board Leadership is to create, preserve and grow shareholder value and contribute to the nation's wealth legally and ethically.
- The Boards must remind themselves that when crisis hits, the survival instincts are likely to cause ethical blind spots and result in serious erosion of the moral values on which the business once flourished. Before the economics of innocent fraud become the rule of the game, the Boards are required to nudge the CEO and the management of the core values and sustainability.
- In extreme situations such as the COVID-19 pandemic, company secretary should redirect the management to simple principles of behavioural ethics – moral awareness of the company coupled with moral intent lead to moral decision making, the foundation of a moral action for an ESG compliant company.

3. Image building amongst students

The Institute of Company Secretaries of India is expected to give focused attention on students. Beyond online teaching facility ICSI may extend support to students by conducting online mentoring and counseling sessions on exam stress and anxiety management, memory and concentration techniques, time management, goal setting, study techniques, CSEET guidance sessions to help potential students enroll in the courses. Employability Skills webinars may be organized for the benefit of students. Organising such online programs will make the students motivated and committed towards continuous learning.

IV. CONCLUSION

It is inevitable that many businesses will come under severe distress in the next few weeks and months. Large parts of the economy have shut down. The uncertainty as to when and how business activities will resume adds enormously to the pressures on Company Secretaries. It would be bad enough to lose a business, but it would be a tragedy to get

into a position of being restricted or disqualified or to end up with personal liability. The discipline imposed on Company Secretaries to act not only responsibly and reasonably, but also be in a position to demonstrate that they have done so will assist them in navigating through the extraordinary challenges the profession will face in the near future.

REFERENCES: -

Part B of Part A of schedule III and Annexure I of SEBI circular dated 9 September 2015, Continuous Disclosure Requirements for Listed Entities - Regulation 30 of Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015, online available (https://www1.nseindia.com/content/equities/SEBI_Circ_09092015.pdf)

Principles for Corporate Governance in the Commonwealth (1999), *CACG Guidelines*, Online Available http://www.nfcg.in/UserFiles/cacg_guidlines.pdf

Mohd Ali Khan & Shahi Urvashi, Impact of COVID-19 on Global Insolvency Regimes online available: https://iica.nic.in/images/Impact_of_COVID-19_on_Global_Insolvency_Regimes.pdf

Report of the Committee Constituted by MCA to formulate a policy document on Corporate Governance (2012), Online available: <http://www.nfcg.in/UserFiles/Guiding-Principles-of-CG.pdf>

COMPANY SECRETARIES ACTING AS CUSTODIANS FOR REVIVAL OF INDIAN ECONOMY IN UNCERTAIN TIMES

CS Sunita Saha

Email-ID: ghataksunita15@gmail.com

I. Introduction

The COVID-19 pandemic and an unprecedented isolation have hit us hard socially, financially and economically. Doctors across the world are fighting to save the lives of the patients from COVID-19 by using supporting life saving devices. On the other side the Ministry of Finance and the Ministry of Corporate Affairs and the Professionals are implementing changes in the provisions for supporting the revival of Indian Economy from distress. Professionals in various fields are faced with an entirely different array and level of stress during the phase of complete confinement caused by the pandemic situation. (Sarafino 2002), discussed that, stress is considered as a situation which is the result of interactions of individual and their surrounding environments and causes disharmony between situational demands and bio psychosocial resources. (Behnoudi, 2005), stated that stress is a situation in which individual is forced to act, and cannot bear the received mental tension. In other words, stress means readjustment of individual with new situations and conditions. Whenever a change occurs in life, individual is confronted with stress.

On 24th March 2020, the Government of India specified a complete isolation for 21 days that limited the movement of the population of the country which is considered to be only one of the remedies against the present COVID-19 pandemic. Such a decision was taken by the Government of India after the 14 hour public curfew as declared on 22nd March 2020 which was followed by series of regulations as enforced by the Government. Following the regulations and declarations of the Government, the State Government also specified complete restriction of movement of the people of the respective states. On 14th April Government of India extended the period to 3rd May 2020 with a conditional relaxation after 20th April for the regions where the spread has been controlled. The Union Government shall be declaring and implementing new lockdown guidelines from May 4, 2020. This article critically evaluates the current situation of business in India in such drastically unfamiliar times. It throws light on the key skills of the Company Secretary professionals and their contribution towards the revival of the economy. The professionals are required to combat such stressful scenarios around them and they must adopt some measures for overcoming the stress. The stress management strategies like reframing

problems, positive attitudes, establishing connections with others, engaging in activities to enjoy life, exercising regularly, eating healthy, getting enough sleep and other measures can help the professionals to overcome the dystrophic sufferings as faced by themselves and the society. Learning to handle stress in healthy ways is very important. The ultimate goal is to have a balanced work and family life. There are many healthy ways to manage and cope with stress. One can either change the situation or change his or her location. Since everyone has a unique response to stress there is no “one size fits all” solution to manage it. So one has to focus on what makes him or her feel calm and in control.

II. Uncertainty in Business

The present global crisis shall be affecting both advanced and developing countries. The after effects of the pandemic shall impact all sectors of the economy both listed and unlisted companies and all other class of financial institutions. The situation shall be causing stagnation in production, service, and banking sectors especially Metals and Mining, Pharmaceuticals, Chemical & Agrochemicals, Textiles, Gems & Jewellery and Hotels as stated by CARE (Credit Analysis and Research) in their report published on March 21 2020. Supply Chain Management system has too been hugely affected since declaration of the lockdown by the Government. A drastic change outcome shall be visible in the financial statements of the companies as the revenue generating sources of the companies are getting affected due to the lockdown situation for the Nation. Some form of supporting stimulus is necessary for revival. India is receiving alliance from the international cooperation. *Economic Times (2020)*¹, specified that after a 21 day lockdown situation there shall be 80%of the production loss causing a loss of Rs 35,000 to Rs 40,000 crore on daily basis as per CARE rating. ² As per Asian Development Bank study, COVID-19 is expected to have an impact between 0.1 to 0. 4 percent on world GDP, but it also stated that any prediction is difficult to make till the situation gets recovered. As stated in the report of CARE, 10% of the total production of Indian steel industry is being exported and that shall be affected if the crisis situation extends. The downstream players in the industry shall be facing liquidity problem whereas others will be in a more resilient position. 40% of India’s revenue comes from the export of pharmaceutical products and the manufacturing is dependent on import of Key Starting Materials (KSI) and Active Pharmaceutical Ingredients (API) from China. Because of the control issues due to

¹“Covid-19 to shave Rs 40k cr daily off economy; Q4 growth seen at 1. 5-2. 5%: Care Ratings”; 25th <https://economictimes.indiatimes.com/news/economy/finance/covid-19-to-shave-rs-40k-cr-daily-off-economy-q4-growth-seen-at-1-5-2-5-care-ratings/articleshow/74816486.cms>

²Report by CARE Rating ; March 21 2020

COVID-19 outbreak, companies are forced to rely only on few products which have being stocked for production in the month of January 2020. India has restricted export of the pharmaceutical products and most of the companies working in this sector will significantly suffer and there will also be problem arising in the cash management system of these companies. *Economic Times (2020)*³. stated that the Government is likely to lift export restrictions on certain antibiotics and anti-diarrheal drugs as China's Hubei Province, a major hub for bulk drugs is slowly bringing up its production after the recovery from the outbreak of COVID-2019 virus. *The Hindu (2020)*⁴, stated that the Indian pesticide industry is heavily dependent on the import of Chinese raw material. The Agricultural Ministry reported that the inventories may be sufficient to some extent for Kharif sowing as Indian industry is stocked with inventories for the season. But winter crop season will be affected as there will be depletion of the stock of pesticides. The cost of inputs that shall be imported is also estimated to increase by 10% -25%. But as India is an agriculture based country where the substantial living of the people depends on agriculture so India will remain with positive growth figures. India stands in the tenth position in the export of chemical products which shall be affected due to such adverse situation. The textile and clothing industry employs about 105 million people and also earn US\$40 Bn⁵. The major impact will be felt by the exporters of the products under textile industry. People will be facing with the liquidity problem with limited bargaining power. Huge deficit will also be faced by the people associated with tourism and hotel sector. There are restrictions imposed on people by the Indian Government on travel to foreign locations across the world, thus affecting both inbound and outbound travel. Gems and Jewellery Industries will also suffer. These industries must be financially cushioned for their revival and the professionals' knowledge and skills needs to be utilized by the management authorities of the national companies.

III. Economic Policy of the Government

³“Covid-19 battle: Restrictions on drug export may be lifted”; 31ST March 2020; 7. 45 AM

<https://economictimes.indiatimes.com/industry/healthcare/biotech/pharmaceuticals/restrictions-on-drug-export-may-be-lifted/articleshow/74900902.cms?from=mdr>

⁴“Pesticide sector hit by input issues”; 11th March 2020; 22:30:51;

<https://www.thehindu.com/business/pesticide-sector-hit-by-input-issues/article31043301.ece>

⁵Report by CARE Rating ; 21st March 2020

In order to cushion the economic crisis and for the revival of the business activities the Government has announced changes in the monetary policy.

Reserve Bank Of India (RBI) drafted the minutes on Monetary Policy on 13th April 2020 for its meeting held dated on 24th, 26th and 27th March 2020 during which by resolution, was passed a reduction on the repo rate by 75 basis points to 4.40 percent from 5.15 percent, and marginal standing facility and Bank rate was reduced to 4.65 percent from 5.40 percent⁶. As declared by the RBI and published on 18th April 2020 in Telegraph; the Central Bank has reduced reverse repo rate to 3.75% from 4.4%. The repo rate is the rate at which the RBI lends short term funds to Banks and reverse repo is the interest that bank earns from surplus funds as they park with central bank. Economic Times (2020)⁷; reported that, The International Monetary Fund (IMF) has predicted Gross Domestic Product (GDP) growth of 1.9% for India in 2020 as this shall be the largest Global Depression since 1930. The impact of the crisis will be affecting the lives of the companies, its employees and other stakeholders.

IV. The Growing Need of CS Professionals in the Post Pandemic Situation

Company Secretaries are multi-disciplinary professionals serving the economy in their versatile ways. As per the Companies Act, 2013 Section 2(24) defines “Company Secretary” as defined u/s 2(1) (c) of the Companies Secretaries Act 1980. The Act contains that company secretary must be the member of the Institute and an individual can be a Key Managerial Personnel of the company. The meaning of Key Managerial Personnel is given under section 2(51) of the Act read with section 203(1); which contains that a Company secretary can be a KMP and Rule 8A of the Companies (Appointment and Remuneration of the Managerial Personnel) Rules, 2014 requires that every listed company which has a paid up share capital of Rs 5 core or more shall have a whole time Company Secretary other than company covered under rule 8 that is the listed company having a paid up share capital of Rs 10 core or more. He/She acts as a liaison with the Board of Directors, Shareholders, Government, Regulatory Bodies and all other Stakeholders. The primary role of a Company Secretary is to provide the best service by mandatorily abiding by the guidelines of the Regulatory Bodies and helping the companies to move towards

⁶Press release by Reserve Bank of India published dated 13th April 2020.

⁷ “IMF projects India's growth rate at 1.9% in 2020, forecasts global recession due to Covid-19”, 14th <https://timesofindia.indiatimes.com/business/india-business/imf-projects-indias-growth-rate-at-1-9-in-2020-forecasts-global-recession-due-to-covid-19/articleshow/75142899.cms>

sustainable growth and development of the company and the Nation. The contribution of these professionals towards serving the social interest of the economy is commendable.

The turbulent situation post the pandemic will be leading the world towards economic recession. The tremors of the present crisis may also be felt on the scope of work of Company Secretaries. However the impact may not be as severe on the profession considering the crucial role of Company Secretaries and their position will remain largely unaltered, subject to some variations with regard to procedural changes for revival of the economy.

As mentioned in the report published by ICSA- UK, the CS professionals are serving in the best interest of the company and are bridging the gap between the Board and its stakeholders, meeting organisational objectives. Once the normalcy is achieved post lockdown situation, the Board will be meeting to discuss the financial position of the company and the company secretary, acting as a compliance officer, will be supporting the Board by maintaining the key principles of the Governance, Transparency, Fairness to all stakeholders, Disclosure of all financial and non financial information in a comprehensible fashion, and supervision of the company's activities by independent Board of directors. The Chairman of the Board relies on the Company Secretary for Corporate Governance reports. Companies are required to maintain Secretarial Standards specifically SS1 and SS2. Adherence to these standards renders more credible information to the stakeholders.

V. Work of CS & Government Relief Measures during Pandemic

The Ministry of Finance in its press note dated 30th March 2020 announced several relief measures for the corporate sector to cope with the burden of achieving the approaching timelines on compliances during this period of outbreak of COVID-19. These measures relating to statutory and regulatory compliance matters across sectors as published on 24th March 2020 by Press Information Bureau⁸ on matters relating to Corporate Affairs are given as under:

1. No additional fees shall be charged from 1st April to 30th September 2020 in respect of any document, return, statement etc that is required to be filed with MCA-21.
2. The mandatory requirement of holding meetings of the Board of the companies within prescribed interval provided in the Companies Act, 2013 (120 days), shall be extended by a period of 60 days for next two quarters i.e. till 30th September 2020.

⁸<https://pib.gov.in/PressReleaseDetail.aspx?PRID=160794>

3. Independent Directors are required to hold at least one meeting without the attendance of Non-independent directors and members of management. For the year 2019-20, if the Independent Directors of a company have not been able to hold even one meeting, the same shall not be viewed as a violation.
4. Ministry of Commerce shall be issuing a detailed notification relating to the compliance of various regulations.

Company Secretaries are associated with the work of recording and filing of various documents and drafting of minutes and these corporate secretarial services will remain within the purview of their work. Only delay has been observed by the authorities with regard to filing and in maintenance of books of accounts but the provisions of the Companies Act, 2013 remains the same. However, the role of the professionals will be considered to be important for reviving the financial performance of the companies. The professionals will be advising companies on matters relating to the legal and procedural aspects of various provisions as given in Acts and Regulations. The six major industries as stated above will be requiring the aids of the professionals for their revival. In the next quarter of the financial statements for 2020-2021, there will be changes in the financial performance but that shall not affect the compliance procedure of companies. There will be changes in the movement of the stock market and derivatives and derivative market relating to the shares of the public limited and other types of company but the economy must be revived and reach its previous position. Company Secretaries provide an advisory role in regulating the foreign exchange market. Money needs to be directed towards the productive sectors of the economy once the lockdown curbs are relaxed. The companies make raise finance in the form of shares and debt capital. The Board of Directors with the advice of the Key Managerial Personnel will act diligently. Slowly the funds shall be injected and the shareholders may diversify the investment of the funds. It may also happen that the Government may liberalize certain provisions for the upliftment of the economic, financial and social concerns of the company.

It could be seen that the role of the Company Secretaries will be considered to be more important as they will be expected to take responsible positions of liaison officers and advisors to the corporate sector on the matters relating to all international trade and practices. Their patience in handling crisis, knowledge, skill and diligence will result in achieving high performance in companies by bringing transparency thereby increasing the trustworthiness of the shareholders.

VI. CS Involvement in Strategic Decision Making for companies

Company Secretaries not only perform an important role in maintaining the provisions of laws but they also contribute in recreating the brand value amongst the various stakeholders by balancing the socio economic goals of the company and the Nation with the objective of attaining accountability and transparency. On the closure of this turbulent situation and with the mass fight against the pandemic, the professionals can support the company in all the financial and managerial decision making that can help the Board of Directors to recover from the economic crisis.

1. Companies donating to the PM CARES (Prime Minister's Citizen Assistance and Relief in Emergency Situations Fund) can be claimed under their contribution made for corporate social responsibility (CSR) but the same relief cannot be claimed under Chief Minister Relief Fund. Also the contributions made to State Disaster Management Authority for fighting the virus, would qualify as CSR Contribution. The Union Government has notified for the alteration of Schedule VII of the Companies Act, 2013 for incorporating the type of expenditures for the purpose of COVID-19. Company Secretaries can play an instrumental role for development of CSR values for the organisation.
2. As per Section 137 of the Companies Act, 2013 which deals with filing of financial statements and the name of the return is AOC-4 which has to be filed within 30 days from the date of the Annual General Meeting and has to be signed by either Managing Director or Whole Time Director or Company Secretary so here also lies the importance of the Company Secretary professional.
3. As per section 92 of the Companies Act, 2013 which deals with filing of annual return which has to be filed within 60 days from the date of Annual General Meeting has to be signed by the same persons as stated in section 137.
4. Quarterly returns can also be filed by the company so when the economy starts operating the role of the CS professional will be taking an important place.

VII. Expanding Advisory role of Company Secretaries

It will be the duty of the professional to help the companies by providing advise in increasing the overall revenue and earnings of the company. There can be strategic tie ups with foreign countries and Company Secretaries can act as corporate law advisors in regulating the stock market, foreign exchange market, environmental protection laws and can also guide many corporate in entering into strategic alliances.

Companies will be suffering from huge production loss due to restrictions as imposed by the regulatory authorities on import and exports. There can be problem of labour unrest because of transportation from different corners of the country, but the professionals can assist in designing the capital structure and defining the production type of the companies while considering the constraints of resources.

As there will be huge fluctuations in the movement of the stock market, the individual portfolios of the company and the citizens will also be affected. CS are the key advisors in the stock market and can help in analysis of capital investment proposals.

Changes can also be seen in the share capital of the company and if the company decides to buy back some of its shares that can be done in assistance with the professionals.

In the changing times, CS shall also be expected to provide extensive guidance to the functional managers/heads relating to the various provisions of the laws to facilitate a culture of good governance in corporate sector.

Company Secretaries will continue to perform their duties to the audit committee and also act as a whistle blower with the primary responsibilities of decision making at the Board level while ensuring that all are in compliance with various provisions of law.

Company Secretaries in Practice besides many other functions prepare independent secretarial audit report under section 204 of the Companies Act, 2013 read with Companies (Appointment and Remuneration of Managerial Personnel) Rules 2014, which is applicable to all listed companies and companies with paid up capital of fifty core or more and every public company having a turnover of two hundred and fifty crores or more.

CS can guide start ups and Micro Small Medium Enterprises in meeting with various regulatory measures and providing them professional support from time to time in setting up and managing their business. They can provide representative services for deliberating in front of the Company law Board, National Company Law Tribunal, Securities Appellate Tribunal and others.

VIII. Measures for betterment of the profession - A Suggestive Approach

The regulations imposed by the Government of India has established a “regulation raj” which has shifted from “licensing raj”. The Institute of Company Secretaries of India contributes for the development of India. The present situation is leading to global depression and the GOI is drafting and enforcing various mandates and is trying to liquidate the economy. GST revenues of the Government have reduced due to the closure and as the professionals are acting as the representatives of the Government so their duties and responsibilities will increase once the companies start their operations and financial activities. Government with the support of International Monetary Fund is trying to provide concessional financing and debt reliefs and Reserve Bank of India is trying to ensure credit flows with the reliance that financial market shall work well once the production gets started. In order to make the economy functional after the pandemic situation more investment has to be made in health system and for maintaining social safeties. IMF⁹ predicts that India and China have a potentially positive growth rate of 1. 9% and 1. 6% respectively with respect to other countries of the world. Companies with the support of the Government regulations shall be on the path of revival. By the end of 2021 the economy will have zero percent growth shifting from the negative growth during the end of the final quarter of the year 2020 as reported by IMF Chief Economist. Company Secretaries are instrumental in implementing CSR values and policies therefore some modifications to add to the health measure guidelines for the companies can be considered.

ICSI can also suggest measures for increasing the revenue of the Government and the companies. Expenditures on social measures can be increased. Modification can also be brought in the regulation of Securities Markets with an endeavor to provide investors protection after this pandemic. Though Government is trying to maintain financial liquidity still the Institute can support the banking authorities as the country is facing such a negative global depression after a long time period. Employment in the industries will not be majorly affected due to lack of automation approach as a result of financial constraints. As ICSI works with the core values of Integrity, Ethics, Reliability, Ownership and stakeholder Centricity and they act as professionals for global corporate governance

⁹“IMF projects India's growth rate at 1. 9% in 2020, forecasts global recession due to COVID-19”; 14TH April 2020; 10. 46

<https://economictimes.indiatimes.com/news/economy/indicators/imf-projects-indias-growth-rate-at-1-9-in-2020-forecasts-global-recession-due-to-covid-19/articleshow/75142792.cms>

integrity so their responsibility is immense. ICSI under its MOU with (ICSA-UK) Institute of Chartered Secretaries and Administrators can collaborate and provide assistance to various international bodies.

The ICSI can definitely contribute in the development of the economy and it can scale up the operations of all the sectors working in both rural and urban areas that can again lead to the potential growth of the Nation.

References

Behnoudi Z. Health and occupational stress. Tehran, Iran: Boshra-Tohfeh Publications; 2005 [Persian].

ICSI Vision 2022

Mehta., A. H. (April 13. 2020), “ Emerging Role of Company Secretaries in Corporate Governance”

Press release, Reserve Bank Of India.

Role of Company Secretary; ICSI

Sarafino EP. (2002), Health Psychology: biopsychosocial interactions (4th Ed.). New York, NY, USA: John Wiley & Sons, Inc; 2002.

ROLE OF COMPANY SECRETARY IN REBUILDING ECONOMY

MANAGING WORKING CAPITAL

CS T R Ravichandran

E-mail ID: trravichandran@yahoo.com

INTRODUCTION

International Monetary Fund has recently projected a GDP growth of 1.9 per cent for India in 2020, as the global economy hits the worst recession since the Great Depression in 1930s. The pandemic COVID-19 and consequent lockdown have affected almost all Industries without any exception. For India, the present situation, clubbed with sluggish economic growth in 2019 would pose a lot of challenges to all Companies. Against this backdrop, the role of a Company Secretary, being one of the Key Managerial Personnel, takes on Critical importance in guiding the top Management to manage the Crisis.

REVISE THE BUDGET

Many Companies would have drawn Budget for the Financial year 2020-21 well before the outbreak of COVID-19 and obviously would have not considered the impact of lockdown for such a long period. Hence, it is imperative to revise the Budget and arrive at a Realistic Budget keeping in mind the changed scenario.

RE-EVALUATION OF WORKING CAPITAL CYCLE

The entire Working Capital Components viz., Inventory, Accounts receivable, Inventory Accounts payable should be re-evaluated, since, companies are likely to have elongated Working Capital cycle in view of the downturn in the economy. The Working Capital cycle also depends on the banking products availed by the Company and the same has been explained in subsequent paragraphs. The revised Working Capital cycle and Credit requirement from Banks should be computed meticulously involving all the Functional Heads viz., Marketing, Production, Sales, Finance, Purchase etc.

Unless the revised Working Capital Cycle is arrived at, the revised Working Capital requirement cannot be assessed. Amongst the Working Capital Components, for

effective Inventory Management during the Critical period, the following should be explored.

1. Whether the pending orders can be cancelled or postponed keeping in view of the revised estimate of sales.
2. Whether the inventories need repricing and production cycles changed due to revised staffing pattern / shifts.
3. Whether the orders can be negotiated for a reduced price.
4. Whether the quantities earlier ordered can be reduced.
5. Whether cash discounts, incentives to Sales personnel be offered to reduce the level of Finished Goods.
6. Reassessment of market dynamics and demand and recasting their production lines with ABC analysis and readjusted production facilities.
7. Replacement of machineries for improved productivity as the procurement now can be made at low costs.
8. Exploration of new markets and bundling of products wherever possible should be explored to push Sales.

Receivable Management

During recession, Receivable Management would pose many challenges. Customers must be categorised on certain parameters according to companies and the approach should be different for each category of customers. As the ultimate aim would be to realise cash and for effective receivable Management during downturn, the following steps may be considered.

1. Explore a Bank Guarantee for deferment of / discount in Receivables.
2. Some customers may be willing to pay immediately (may be with a small cash discount) and others would be willing to pay higher but take time to pay. Divide the customers on this parameter and focus on quicker collections.
3. Explore offering higher & quicker Collection Incentives to the Sales / Collection team.

Payables Management – Important on-going Source of Financing

Like Receivables management, payable management also poses lot of challenges and calls for meticulous handling of Suppliers. As Suppliers are an important source of Financing, the following steps be explored for effective management.

- Inform the Suppliers about the estimated reduced procurement in view of the revised estimated sales and assure them higher volume of procurement, once

the sales improve. This would go a long way in obtaining uninterrupted supplies.

- Depending upon the criticality of the supplier, negotiate for the revised order quantity, price and discounts.

Appropriate Banking facilities

The most important thing in Working Capital management is to choose the right Banking facilities and the same is all the more critical during economic downturn. Right Banking facilities, not only include availing right quantum of Credit facilities from Banks but also availing right Banking Credit facilities such as CC / Packing Credit, Bills Discounting / Purchase, LC BD, LC (Inland / Import) and BG etc.,

Right Banking Credit facilities would vary from one company to the other. As the commission charged by Banks for the Non-fund-based limits are much lower than the Rate of Interest charged for the Fund Based limits, companies should endeavour to utilise more Non-Fund Based limits.

With right Banking facilities only, a company can effectively negotiate with customers, Suppliers etc., The requirement of the New/ Additional facilities may also be at the behest of the Suppliers. For example, a Supplier hitherto supplying on credit, may demand Letter of Credit (LC) for future supplies, due to economic downturn. If LC is provided, the supplier may even offer longer credit period at a reduced Price.

Similarly, a company also may ask their customers (1) to open LC for their sales (2) demand Bank Guarantee (BG) for the balance amount or to defer the receivables. Companies can discount the LCs, Bills, BGs with Banks for Cash generation. Receivables management pose lot of challenges even during normal period and it would be more during downturn.

It should be noted that utilisation of right Banking facilities would result in reduction of cost, uninterrupted supplies, enhanced sales and improved cash flow.

It is imperative to review the credit facilities periodically and change the utilisation of limits according to the current scenario. For example, once the economy starts improving, suppliers may be willing to offer clean credit without demanding LC and the company also be willing to offer more credit to its customers. Hence, the utilisation of the Banking facilities also would undergo change depending upon the progress in the economy.

Revised Working Capital Cycle and Working Capital requirement

Taking into consideration the above, a company would be able to arrive at the Revised Working Capital Cycle and compute the Revised Working Capital Requirements & Revised Banking Products.

Cash Management, Cost Control and Common mistakes during downturn

Effective Cash Management not only include Cost Control but also calls for generating Cash wherever possible. For example, whether Company can rent a surplus space, undertake job work (if full capacity is not utilised), redefine the target market & focus on market based on quicker cash flow. Closely monitor the Cash flow and ensure that the expenses are in line with the Accounts Receivable.

While the mantra for the entire company during downturn is “Cost Reduction”, the essential and discretionary expenses must be carefully analysed and handled. Common mistakes committed by companies include reduction of Marketing & Training expenses during recession and the impact of those actions may be severe. Companies should bear in mind that during economic downturn, every Customer would be looking for Suppliers who offer them better terms and hence, reducing marketing expenses, may prompt the Customer to switch over. Similarly, during recession, the morale of the employees would be lower. It is the responsibility of Management to imbibe confidence among the employees during difficult times and training them in their Critical functions would not only improve the quality but also enhance their sense of belongingness during difficult times.

Conclusion

Company Secretaries being a vital link between Board and Other Stakeholders (both internally and externally) can play a crucial role and undertake the following responsibilities.

1. Co-ordinating with the Functional Heads in the Preparation of revised Budget for the Company.
2. Participate in the discussion/ meeting with Suppliers to finalise the renewed terms of supply of raw-materials
3. Co-ordinating with Board and Sales Manager in preparing new Credit Policy of the Company due to economic slowdown.
4. Obtaining appropriate Credit facilities from the Bank (including enhancement) in line with the Current requirement.
5. Prepare Cash Budget, monitor and take appropriate corrective steps, wherever required.
6. Keep updated regarding the macro economic factors, monitor the Competitors and ensure that the internal operations of the Company are aligned seamlessly with the external environment.

To conclude, Working Capital management under recession calls for (1) good understanding of business environment (2) meticulous and detailed planning and (3) greater co-ordination amongst various stakeholders. Hence a Company Secretary is well placed to play a pivotal role towards managing the economic downturn.

Reference

Managing effectively in a downturn, turning challenges into opportunities, Online

https://www.pwc.com/id/en/publications/assets/managing_in_a_downturn.pdf,

PWC, Indonesia.

COVID-19: A POSSIBILITY IN PANDEMIC

CS Saravanan

Email-ID: saravanan03@infosys.com

Abstract

With the outbreak of COVID-19, the world is facing a grave global health crisis which is spreading misery to all segments of population and drastically impacting the livelihood of many. According to International Monetary Fund (IMF), the pandemic will cause a global of 2008-2009 and will be much more than a health crisis, destroying societies at large. It is very clear that the post COVID-19 is going to bring a drastic change in business and the way it operates.

This article attempts to analyze the professional growth challenges in the aftermath of the economic slowdown for Company Secretaries and their role in economic rebuilding while navigating through the new normal. This pandemic is a tremendous opportunity for India to learn, innovate and build a more resilient and diverse economy. This is a challenging time for Company Secretaries to perform their duties and prove their capabilities in ensuring good corporate governance. Will Company Secretaries stay ahead of the curve and steel themselves to succeed the shift in near future?

INTRODUCTION

In recent months, India has seen a substantial economic impact of the COVID-19 on financial markets and vulnerable industries such as Travel & Tourism, Hospitality, Sports & Entertainment, and Manufacturing. Countries everywhere are struggling hard to curb the spread of virus and at the same time trying to hold the falling economy. Nonetheless, it's likely that the COVID-19 threat will sooner or later disappear like previous pandemics, such as SARS or Ebola and economy will slowly recover. Grounded planes will fly again, deserted theatres, parks, shopping malls will replenish and business becomes normal, but the world we are going to witness may be totally different from how we experienced so far. The impact of COVID-19 is not just on business but on professionals like Company Secretaries who are struggling through a narrow passage between adopting to the new normal and managing to achieve compliance. This is not just a temporary impact, but could also be a turning point for business, regulatory and way in which our profession functions.

It is going to be tough, but it is also a phenomenal opportunity for us to unlearn, relearn, and test our capabilities. ‘COVID-19: A Possibility in Pandemic’ thus set the context for this article.

CHALLENGES FOR THE PROFESSION

“You can't stop the waves but you can learn to surf”

– Jon Kabat-Zinn

As companies are carrying out various measures to curtail the spread of COVID-19 infections in the country, a survey conducted by Times Jobs has revealed that majority of professionals believe, the outbreak has adversely affected their way of working. A brief analysis on the impact of COVID-19 on our profession is given as under:

Work place to Work space

The current crisis which the country is facing has been pushing companies to take a sudden transition towards remote working. Currently millions of employees are working from home which has raised concerns about employee productivity.

For Company Secretaries, adopting to the new normal of remote working no doubt could be bit challenging, because their nature of work predominantly involves coordinating with various stakeholders inside and outside the organization, accessing countless company files available in the server and maintained physically in the office. Sticking to a 9-to-5 schedule may prove unrealistic and lot of professionals who are working remotely for the first time are likely to struggle to preserve healthy boundaries between their professional and personal lives.

Further, the remote connectivity mandated professionals are to explore the collaborative online tools and cloud based solutions to perform their routine time-based activities. However, these solutions attract a serious risk of cyber-attack in remote working which is a biggest threat for the Company Secretaries who handles confidential information of the Company. Over the past weeks, web security companies are witnessing an increased amount of website exploitation attempts. Recently, research from security firm Check Point noted that COVID-19 related domains are 50 percent more likely to install malware in your system which can be used to steal browsing history, cookies, ID/passwords, crypto currency and more. Unless your system is well equipped to combat this, your data will become prey to those malwares.

New normal & Practical hindrance

People are adapting to a new way of living while Government taking all the possible measures to curtail the spread of the disease which mainly includes social distancing,

hygiene guidelines, restriction on people movement and social gatherings. On the professional side, The Ministry of Corporate Affairs (MCA) introduced CAR form as a confidence building measure making companies to affirm their readiness in handling with the pandemic and bringing transparency in enforcement of ‘work from home’ policy by companies. The temporary relaxations provided by Ministry of Corporate Affairs and SEBI for certain corporate compliances w. r. t Board Meetings and other filings, making CSR spend for COVID-19 and contributions to the PM-CARES Fund as an eligible CSR activity is laudable and well appreciated by CS professionals.

MCA has also provided an opportunity for companies to make a fresh start through Companies Fresh Start Scheme (CFSS-2020) which provides for complete waiver of additional fees/penalty in filling, immunity from launch of prosecution and immunity from proceedings for imposing penalty. This is a boon for lot of inactive companies to make a fresh start by making use of CFSS.

The temporary relaxations provided by the regulators is a relief to the companies in payment of penalties on account of unavoidable delay in meeting the periodic and event-based compliances. However, companies ought to comply with any other regulatory requirement, that has not been specifically relaxed such as the disclosures under Regulation 30 of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015. Apart from that, many companies are finding difficulties in coordinating with secretarial auditors for completing the audit, responding to investor calls, handling with dividend claims and IEPF matters, coordination with banks for funding due to lack of office facilities. At this point, most of the listed companies paused their plan for Annual General Meetings, logistics arrangements for printing and dispatch of annual report, which are heavily impacted by the lock-down of the whole country.

During this unprecedented situation, lot of small-size companies may need urgent funds from banks to payoff employees’ salaries. According to Section 179(3)(d), the board of directors cannot borrow money without a resolution passed at its meeting. Although there is a relaxation provided for conducting meeting through video conference for various significant matters, there is no relaxation provided to get the matters, falling under section 179(3) through circular resolution which can adversely affect lot of companies who are currently facing a situation of cash crunch.

ROLE OF COMPANY SECRETARIES IN THE WAY FORWARD

“New, challenging situations are possibilities, not problems. A problem would be if nothing new happens to you. ” - Sadhguru

In an unprecedented situation like this, Company Secretary should be working to develop a futuristic approach with speed and innovation to continuously monitor the situation, evaluating and improving the ability to remain robust in an ever-changing business situation which is subject to disruption and sudden change. Below are the few significant steps to be taken by the company secretary to mitigate risk arising out of the pandemic.

Take responsibility and act with urgency

Due to rapid change in laws over the recent years, the role of the company secretary has transformed into way more than the basic statutory requirements. Predominantly, the obligation for developing and implementing processes to promote and sustain good corporate governance has fallen largely within the duty of the company secretary.

At uncertain times like this, Company Secretaries should ought to take responsibility and apprise the Board and top management on the impact of the situation w. r. t governance matters, and significance of being prepared to handle it effectively. He should give confidence to the Board and leadership by keeping the company's compliance culture alive while adapting to the challenging situation. It is also a valuable opportunity for Company Secretaries to extend their support to Company in handling the business continuity risks. Perhaps, this is a testing time for Company Secretaries to prove their capabilities in ensuring compliance of law in true letter and spirit, and adherence to ethical standards for effective management of the company.

Rebuilding investor confidence

An important element of good governance is transparency which means that investors should be informed about the company's activities, its future plans and any risks involved in its business strategies. Investors are concerned about the fluctuations in the stock market due to the impact of COVID-19. It is essential to ensure proper disclosure of matters concerning the performance and activities of the Company, timely and accurately to all investors enabling access to accurate facts which precisely reflects the position of the Company.

Further, this unprecedented situation will result in lot of shareholders reaching companies over telephone or email, trying to get the perspective of impact on business. Effective plan should be put in place by the Company Secretaries to address such matters and general grievances of investors. Unable to address the shareholder concern and lack of transparency in disclosure at this situation may lead to losing investors' confidence.

Staying ahead of the curve in workstyle

Human life will experience change from being more physically constrained to more virtual than ever before. The corporates are encouraging their employees to make maximum use of technology platforms for networking and performing their regular office work. The temporary relaxation provided by MCA has enabled the companies to conduct extraordinary general meetings through Video conference or other audio visual means.

Looking at the speed at which the society is embracing technology as a new normal, this temporary relaxation may become a rule, few years from now. The recent relaxation by the regulators on Board Meeting made every company secretary to conduct 100% virtual meeting which is cost/time effective and also increases the productivity and efficiency of the Board. It's time for Company Secretaries to formulate best corporate governance practices in conducting virtual meetings ensuring proper flow of information between the board and management, emphasizing transparency, integrity and ethical dealing.

At this time, it's also important to be well-versed with secure Cloud-based document sharing tools to keep exchange of document seamless and effortless with internal and external stakeholders. Company Secretaries needs to be tech-savvy to effectively use the technology for their day-to-day work which helps in reducing the time consumed for administrative tasks. Currently around 30% of the corporate secretarial works are automated which includes mainly automated Board Meeting portals. Company Secretaries should strive to automate more than 75% of their work which enables them to devote more time in knowledge update and fulfilling other significant responsibilities. This is an opportune time for Company Secretaries to implement automation at work and prepare for the futuristic way of conducting work.

Prepare an uncertainty plan

As it is rightly said that "Necessity is the mother of Invention", the Indian industries are promptly adjusting to the changing needs of their customers and vendors, while directing the challenges in running the company operations. Similarly, the nature of work of Company Secretaries is also affected who are highly valued and relied upon by regulators for compliances and considered as an extended arm of the regulatory mechanism.

As quoted by Mr. Ajay Tyagi, Ex-Chairman of the Securities and Exchange Board of India, "Today Company Secretaries are recognized for their importance on corporate landscape and have become gatekeepers of good corporate governance". Company Secretaries should prepare a survival plan which enables them to function efficiently during uncertainty. Whether it is coordinating with the auditors or conducting the Board Meetings virtually, they ought to be fully equipped to handle their work effortlessly, wherever they are.

ICSI MEASURES FOR THE BETTERMENT OF PROFESSION

ICSI has undertaken tremendous supportive measures in many ways at this uncertain time. The institute has provided several relaxations to the members in context with compulsory attendance for professional development programs, extension for obtaining PCH from March 31, 2020 to June 30, 2020. It is interesting to see the launch of various certification courses which helps the members to be engaged, updated and gain credit hours. The representations made by ICSI before the MCA to accord relaxations in the filing of various e-forms and compliances is commendable.

Few suggestions for the betterment of our profession;

- **Keeping the virtual doors of learning open:** COVID-19 has enforced schools and universities around the world to adopt online learning. Going virtual is not just for meetings, it is efficient to do virtual coaching/session which allows maximum participation. Though ICSI is conducting lot of one way webinars, it would be much appreciable, if institute conducts online live interactive session on various topics. This will keep the members focused and engaged with the institute as well as assist in updating the knowledge.
- **Web-based Competitions:** It is interesting to see that during this time ICSI is planning various online skill enhancement workshops for capacity building of members. It might be an excellent idea to conduct an online Quiz or related competitions for the members and students which rewards the winners with credit hours or other benefits.
- **Platform for sharing:** As companies adopts to the new normal of remote working, it is useful to see how they function and perform corporate secretarial work. A platform under ICSI for members to share their views, suggestions and experience on handling compliances at this tough times will be helpful for every member.
- **Keeping the enthusiasm of students alive:** Appreciate the measures taken by ICSI for the future Governance professionals by extending the registration date for exams, temporary relaxation provided on pre-examination test and one-day orientation program. Use of technology for learning has taken an excellent breakthrough during this pandemic. Considering the current outbreak, Institute should take proper measures to shift the class room teaching to online teaching to keep the students focused and motivated.

FACING THE POST COVID-19 WORLD AND REBUILDING THE ECONOMY

Almost 1/3rd of the population are gradually going into lockdown which stumbled the business across the world. COVID-19 pandemic is considered to be a painful blow to the Indian economy. This condition, clubbed with slow economic growth in the previous years due to repercussion of demonetization experiment followed by the effect of the rollout of GST, is resulting in extremely instable market conditions.

According to the key findings of Federation of Indian Chamber of Commerce (FICCI) Industry survey, a significant 53 percent of Indian businesses indicate the market impact of the COVID-19 pandemic on business operations. Further, this pandemic has significantly impacted the cash flow at organizations with almost 80 percent reporting a decrease in cash flow.

Opportunity to become global manufacturing center

There is a major impact on the international trade since China has been a major market for many Indian products, which is adversely affected by the outbreak of the virus. Immediate measures should be taken to curb the risk of excessive dependency on global market. This pandemic has taught the multinational companies, the impact of the damage caused by of concentrating their supply chains in single destination like China. Post COVID-19 situation, many Western and Asian countries which have massive dependency on China may look at alternative locations for diversifying their manufacturing units. To keep the supply chain unbroken from the COVID-19 impact, Japan has recently allocated USD 2. 2 billion to assist its manufacturing companies to shift their production out of China and move manufacturing base to other countries. This is a huge opportunity for India to become next global manufacturing hub by inviting global countries to shift their commercial operations from China. To achieve this, the Government should also make policy level change with respect to financial aids, land acquisition, tax reforms etc., to encourage MNCs and investors globally. Every calamity is a learning opportunity for Governments, and this pandemic is not proving otherwise. It's high time for India to seriously think about indigenous production of goods, thereby reducing the dependency on global market. By doing so, there is a great potential in capturing the competitors' market share and it also contributes to the country's Make in India campaign.

Path towards economic recovery

Indian Government is taking massive steps in containing the spread of virus, but it is also important to address the key concerns of the industries which may help in minimizing the

impact of the outbreak on the economic growth of India. There is an urgent need to look at the policy and regulations to minimize the impact of pandemic and shape a path for creating a stable economy. Reserve Bank of India has recently taken significant steps, including rate cut of 75 basis points, reduction in reverse repo rate from 4% to 3.5% etc., focusing on maintaining liquidity and easing financial stress. The Government has also amended the Foreign Direct Investment (FDI) policy recently, to discourage opportunist investment in Indian companies by bordering countries in the midst of the COVID-19 pandemic. Now, FDI investments into Indian companies from the neighboring countries will require approval from the government. This is a preventive step by the Government in curbing the opportunistic takeovers or acquisitions of Indian companies due to the current COVID-19 pandemic. The Confederation of Indian Industry (CII) has announced about the setting up of a fund to support rehabilitation of small enterprises and Micro, Small & Medium Enterprises (MSMEs), which is the largest employment generator after agriculture. Government should also think about providing interest free loan to companies to payout salaries of employees for next couple of months. The profit of India Inc., in any sector will obviously come down in near future, which is the sad reality. We should learn to live with it and paddle through this situation with strength and courage. If we are able to withstand this situation and manage it in near future, India can emerge as a major gainer in Post- COVID-19 World.

When the GOI is taking significant steps to revive the falling economy, it is the duty of professionals like Company Secretaries to guide the Companies to steer through this state, vigilantly. Company Secretary is not only the ethics guardian of a Company but also has a larger social responsibility towards rebuilding the economy. It has become imperative for professionals like Company Secretaries to acquire cutting-edge knowledge and skills that are not only enabling and promoting good corporate governance but also equip them to adopt and function in any uncertain situations. Commitment to the motto of ICSI “*Satyam Vada, Dharmam Chara – Speak the Truth, Abide by the Law*” in letter and spirit by all the professionals would give rise to well-compliant corporates enhancing the economic growth and support the nation to rebuild itself at times of uncertainties.

GREATEST OPPORTUNITIES IN LIFE ARE ITS UNCERTAINTIES.

It is a fact that the world outside is uncertain, which means things are changing. Life is uncertain and that’s what makes it challenging, interesting and a possibility. For those seeking opportunity, uncertainty is the greatest time. People with vision will make it a possibility, those who don’t, will look at it as a problem.

According to international monetary fund, the COVID-19 pandemic will cause a global recession in 2020 that could be worse than the one triggered by the global financial crisis of 2008-2009. It is also interesting to note that remarkable change and innovation in business happened at times when economy struggled from recession. Adapting to change is equally important as adopting change.

It is very clear that COVID-19 is likely to lead a new normal, being conscious of and steel oneself for these shifts will help the economy to sail across the post COVID-19 world efficiently. Company Secretaries should make use of this pandemic to become far more resilient than before and be prepared to face the shifts in profession and business ahead. Every member should make a commitment to upgrade themselves into a better version, physically, mentally, emotionally and professionally, enhancing the competence to make every problem as a possibility. It is not only important to stay home and stay safe it is also vital to upgrade our skills at these unprecedented times.

*‘Stay Home, Stay Safe and **Skill Up**’*

References

i) (March 19, 2020); *‘COVID-19 impacts professional life: Jobs at MNCs to be most vulnerable; virus affects hiring’*

https://economictimes.indiatimes.com/magazines/panache/COVID-19-impacts-professional-life-jobs-at-mncs-to-be-most-vulnerable-virus-affects-hiring/articleshow/74710055.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst

ii) (April 05, 2020); *‘IMF sees coronavirus-induced global downturn ‘way worse’ than financial crisis’*

https://economictimes.indiatimes.com/news/international/business/imf-sees-coronavirus-induced-global-downturn-way-worse-than-financial-crisis/articleshow/74978719.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst

iii) (March 20, 2020); *‘Impact of COVID-19 on Indian Economy’*

<http://ficci.in/spdocument/23195/Impact-of-COVID-19-on-Indian-Economy-FICCI-2003.pdf>

**CS PROFESSIONAL GROWTH OPPORTUNITIES
DURING ECONOMIC SLOWDOWN**

CS V. NAMITA

E-mail ID: namita456@gmail.com

Company Secretary plays a very important role in the economy. He is the chief advisor to the Company. A Company Secretary designs the meetings, interacts with the stakeholders, keeps an eye on the investments and helps the Company to remain in tune with the norms and regulations.

With the outbreak of COVID-19, the economy has come to a standstill. No production, no new Companies, no new investments, job cuts, pay cuts etc.

Now, what will happen to the Company Secretaries? Will there be any impact? If yes, how would they recover, at the same time, what role they will play in rebuilding the economy?

This paper aims at analyzing the impact of these turbulent times on Company Secretaries. For easy reference, the objectives are divided into three namely,

1. To analyse the impact of turbulent times on Company Secretaries
2. Role of Company Secretaries in rebuilding the Economy
3. Suggestions to ICSI

These objects are dealt separately as below:

I. To analyse the impact of turbulent times on the Profession:

Business has been stranded everywhere. Economy itself has become weak. When there are no production activities happening, the impact on our profession has also been huge.

These have been testing times. The world had witnessed pandemics before too. But the situation in which we are in is quite different. We got so used to the hustle and bustle of lives that it's now hard to sit back and relax. We got used to running with time.

Our days start with follow-up on the previous day's activities and then we proceed to fix agendas and meetings for the day. This is the norm in the life of a Company Secretary. Talking to directors, to regulators, to the Stock Exchanges and scheduling the day's

activities. After the meetings, it's minutes and other compliance requirements. The stress was immense too!

Now, we have all the time to sit back and relax. But then, we are still stressed out. The reason for this is the future is very uncertain. It looks bleak. What will happen to our jobs, what will happen to the economy and will it all come back to normal again. These are the questions on everyone's minds.

Impact:

The Companies Act 1956 was replaced by the Companies Act, 2013. This Act has provisions facilitating online filing of documents, digital payments and holding of meetings in the virtual mode.

The impact of COVID-19 has been that meetings (Board, General and Committee) will now have to be mandatorily held in the video conferencing mode. Earlier, it was an option. But now, it should become the way of life.

When it comes to compliances, most of them are being checked or done online. The MCA website has been designed in order to enable stakeholders to complete all the formalities online. And hence, compliances will not be a problem.

So, the impact of these turbulent times will mostly be on the mental health of the professionals. They should keep the stress at bay. Practice positive thinking and put all the negative thoughts away.

Work wise, we have switched to alternatives even prior to this pandemic itself.

Even the National Company Law Tribunal (NCLT) is now conducting the proceedings online, which is a very welcome step.

There will be downsizing of investments which will affect the economy as a whole.

Because of lesser investments, the client opportunities may be reduced. However, we should look for other opportunities too.

II. The role of Company Secretaries in rebuilding the economy:

Necessity the mother of invention goes an old saying, isn't that true?

In order to explain the above saying, let us look at a revolution we had witnessed a few years ago. On 8th November, 2016, our Hon'ble Prime Minister Shri Narendra Modi announced demonitisation. Did we hear of digital payments before? We had the debit card, credit card but online platforms for digital payments was a new concept – utility bills to

amount transfers to online bookings – everything is now being done at the click of a button. Even the unbanked rural areas have effortlessly switched to these mobile apps. Paytm became the first Payments bank. A roadside vendor too now accepts payments through Paytm!

Each problem provides a unique opportunity for ‘**startups**’ to create a business around it. Here, I would like to stress on the role played by startups.

Our Government is desirous of promoting entrepreneurship at the startup level and has taken a number of initiatives to ensure appropriate support. The StartUp India initiative was launched in 2015. In this aspect it is relevant to mention ‘**Make in India**’ campaign introduced in 2014 to attract foreign investments and encourage domestic companies to participate in the manufacturing sector. The government increased the foreign direct investment (FDI) caps for most of the sectors and strengthened intellectual property rights (IPRs) protection to instill confidence in the startups. Our Government aims to make the country as number one destination for startups.

The Government has designed a website for startups – incorporation can be done completely online. Moreover, each state has a different policy for startups. Tabs for different states are provided for in the website. Self certification is also permitted. This is to show how Government is taking a lot of steps to support the startup environment.

Being a country with a huge population, plethora of opportunities are available to startups offering products and services ranging from food, retail, and hygiene to solar and IT applications for day to day problems which could be delivered at affordable prices

There are a number of support mechanisms that play a significant role in the lifecycle of startups. These include incubators, science and technology parks, business development centers etc. Incubators provide both monetary and infrastructural support to the startups.

Big business houses are investing in startups Industrialists like Ratan Tata (Ola, Bluestone etc), Azim Premji (DataStax, Myntra etc) and many more are investing in startups giving desired traction and respectability to the segment.

A number of venture capitalists and angel investors are aggressive and are inclined towards the Indian startups as they see lot of potential in them. Startups have a huge growth rate, provided they are managed effectively.

With the pandemic, how's the startup industry faring? Are there any opportunities?

For example: There's lockdown everywhere and people cannot go out due to the various restrictions. The global lockdown opened avenues for a generation of startups which could enable offices to operate online and provide the option of 'Work from Home' for the employees. Ex: Zoom app.

Let us see what the startups are doing:

Food and Grocery segment:

The online food and grocery delivery companies looked to COVID-19 as an opportunity as most of the Indians flocked to these online platforms to order essential commodities. They did have challenges like shortage of staff, however they overcame those challenges and helped people cope with the lockdown.

And these delivery chains are here to stay.

Online food delivery startup Swiggy began delivering groceries in 2019. Now, with COVID-19, it has expanded its services to over 125 cities. During the lockdown period, e-commerce firms such as Flipkart and Amazon focused on the delivery of essential goods to consumers despite an acute shortage in delivery staff and supply chain challenges.

Packaged Indian breakfast brand MTR has also partnered with Swiggy to deliver products from its portfolio. With this tie-up, MTR products such as masalas, spices, breakfast mixes will be accessible through MTR stores and Kirana tabs on Swiggy.

Education:

Now, edtech companies are hoping for an encore in the wake of the Corona outbreak. The pandemic has forced all schools and colleges to shut. Edtech Companies are trying to make the most of the situation offering free access to courses. This not only helps the students but

also is a form of marketing. It is a goodwill gesture. If the website and the courses attract students, they will definitely subscribe to the product, once the lockdown is lifted.

Ed tech Company Byju's has witnessed a 150 percent increase in the number of new students learning on its app during the COVID-19 outbreak. UNESCO has released a list of 'Distance Learning Solutions' to help students continue learning during the uncertain times. Byju's is the only Indian tech Company to be featured under such platforms offering a self directed learning content.

Hygiene:

Hygiene has become an essential part of our lives. Hygiene alone can save us from falling prey to this pandemic. In this juncture, Nivea skincare brand has tied up with Swiggy and Zomato – food brands to ensure that consumers have uninterrupted access to daily hygiene essentials.

Similarly, ITC has tied up with Domino's Pizzas to deliver its Aashirvad brand of flour, salt and spices besides Savlon hand sanitisers to the customers.

Big Bazaar is delivering essential goods with the help of online bike aggregator Rapido. Uber India too is fulfilling the logistics needs of Spencer's Retail.

It's a win-win situation to all the players. For ex: Uber India's vehicles have been lying unutilized. They are assisting firms like Spencer's with last-mile logistics.

The startups and tie ups are here to stay. The writing is on the wall. We will have to build the economy, right from the scratch. Let's analyse the role of Company Secretaries in rebuilding the economy.

Company Secretaries will have a lot of work in their hands. Right from incorporation to preparing feasibility report and assessing investment options, CS can provide feasible and viable solutions in the start up space. Startups need fool proof agreements and a confidence that their IPR rights are protected. A CS can draft the contracts keeping in view the

requirements of the startups. As he also has good knowledge about the IPRs, he will be in a position to guide the startups.

More and more entrepreneurs will now look at incorporating food delivery start ups or those which will help in the last mile connectivity. Company Secretaries will have a very huge role to play. Right from the initial documentation work to compliance requirements – everything has to be dealt by a Company Secretary.

As we have seen above, there are a lot of alliances happening. All of these tie ups need binding agreements where both the parties are clear about their rights, duties and responsibilities. It is the Company Secretary who can tide them through these agreements.

Managing and accelerating a startup is ripe with challenges from all sides – from keeping employees and investors happy, to raising money and constantly improving your bottom line. Not every start-up is bound for success. The startup arena has lot of challenges ranging from finance to human resources and from launch to sustaining the growth with tenacity. It will need professionals who can help, understand and communicate with the stakeholders. A Company Secretary being the face of a Company can interact with the stakeholders and contribute to the success of a startup.

Along with government initiatives, there is a definite upward movement in startup arena in India due to penetration of IT and internet. Many startups are being set up in the service sector including education, legal, retail, insurance and health.

III. Suggestions to ICSI

The ICSI has always been in the forefront to implement technological developments and connect with the stakeholders.

The MCA has issued notifications regarding Board Meetings and how they can be held in a virtual way. Our ICSI is adhering to those guidelines.

STUDENTS:

As it is ICSI has taken many measures to facilitate online learning. The study material is available online, moreover in these times, classroom teaching lectures are also being held online. These are proactive measures and they will enable students to come forward to the profession.

As a part of ICSI's Green Initiative, fees, refunds and all the monetary matters are being dealt online in the digital mode.

A lot of short term courses have been launched by our Institute for the benefit of students as a part of E-learning in the wake of Corona epidemic.

Perhaps, after this pandemic, ICSI should take more initiatives to hold mandatory sessions like E-Governance and other academic programmes too in the online mode.

COMPANIES:

Schedule VII of the Companies Act is linked to Section 135 – Corporate Social Responsibility. This means 'giving back to the society' and encompasses the framework for sustainable development. This Schedule broadly lists out the areas and activities where CSR contributions can be made. Recently, Ministry of Corporate Affairs has amended the schedule to include disaster management. Against the backdrop of increasing fund requirements in various sectors to deal with the pandemic, the MCA has allowed contributions to PM CARES as part of CSR eligible activities.

Some more activities may be added to this schedule so that Companies will come forward and help those affected with the virus. The ICSI should make a representation to the regulators so as to include more activities in this list.

MEMBERS:

Similarly, for the members, webinars are being held wherein professionals can gain knowledge from the comfort of their homes. This is a very welcome move on the part of our Institute. PCH (Programme Credit Hours) are being granted without physical presence. Many certificate courses are being offered for members so that they can update their knowledge in these testing times. ICSI has also partnered with Economic Times to provide free e-paper to all its members.

CONCLUSION:

We have seen that Company Secretaries have a huge role to play in the nation building, especially aftermath the crisis. We have also seen the areas wherein professionals can use their expertise to help the Government and the economy.

ICSI has been providing various resources for the stakeholders enabling them to adapt to the current scenario. Our Institute will continue to remain a torch bearer for change. The

world may not come back to normal immediately. And hence, our Institute will definitely take steps to cope with the new normal ! Together, we can!

REFERENCES

1. Economic Times, 2nd April,2020 – Domino’s and ITC Foods partner to deliver groceries
2. Hindustan Times, 6th April, 2020 – Rapido ties up with essential suppliers to help in last mile deliveries
3. Circular from MCA dated 28th March, 2020 – CSR – 05/1/2020 – CSR – MCA
4. ICSI website – Training Tab, Online Services Tab, Academic Corner Tab

IMPACT ANALYSIS OF TURBULENT TIMES IN INDIA AND EXPECTED RECOVERY SCENARIOS

CS Trupti Upadhyay

E-mail ID: trupti.upadhyay001@gmail.com

The COVID-19 pandemic has effectively brought normal life to a halt in India. The importance of social distancing and a lockdown in curbing the spread of the virus cannot be stressed enough, but these measures also have huge repercussions on livelihoods and the economy at large, which has already been seeing a slowdown over the past year¹⁰.

Along with tackling healthcare on a war footing, the government will have to pay attention to the brewing economic crisis. It has been pointed out by some economists that a downturn could feed upon itself; as more layoffs happen, there will be lower demand, leading to more companies going out of business. It could be a vicious downward spiral, and the government needs to step in and take preventive measures aggressively to avoid recession kind of scenario in the country.

For India, various organisations and rating agencies have predicted GDP growth rate for FY: 2020-21. The same is given below for reference:

Table 1: Predicted GDP Growth Rate for India

Organization	FY: 2020-21
UN (ESCAP)	4.80%
ADB	4.00%
CRISIL	3.50%
Moody's Investors Service	2.50%
ICRA	2.00%
IMF	1.90%
World Bank	1.5 to 2.8%

The actual GDP growth rate figures for FY 2019-20 shall be made public by National Statistical Office (NSO) soon in coming months once the data is compiled. In Quarter 3,

¹⁰<https://www.thehindu.com/opinion/op-ed/how-can-india-contain-the-economic-impact-of-covid-19/article31176015.ece>

India's GDP rate slumped to a 27-quarter low of 4.7 per cent in October-December as published by NSO.

The shock wave that China is sending across the globe is affecting India to a lesser extent than many other countries in Asia because India has limited ties with the Chinese economy. For instance, Chinese tourism¹¹ only constitutes 0.2% of Indian GDP (compared to 5.9% in Thailand for instance). Further, Exports to China and Intermediate goods constitutes only 0.6% and 0.7% of Indian GDP respectively.

At this point in time, in India the global virus outbreak has perhaps had the largest economic impact on the rupee which has depreciated substantially on the back of a global risk-off sentiments and anxiety among investors around the world. Foreign Portfolio Investors (FPI) have pulled out over Rs 1 lakh crore in March, 2020. It is expected the currencies of emerging markets and the prices of raw materials shall continue to be highly volatile in the coming period.

The Finance Minister¹² has announced a few tweaks by extending tax filing deadlines. The government has also raised the threshold for starting insolvency proceedings to Rs. 1 crore. Apart from this, bank charges have been lowered for digital trade transactions for all trade finance consumers.

The Reserve Bank of India (RBI) has been proactively monitoring the economic situation in the country during this lockdown period. Mr. Shaktikanta Das, RBI Governor, in his recent press release remarked about the macroeconomic environment which has deteriorated precipitously since March 27, 2020. The systematic liquidity surplus averaged at Rs. 4.36 lakh crore as at March-end 2020. The activity in corporate bond market has picked up and the redemption pressures for MFs have been moderated. This shows some positive signs in economy. RBI announced to conduct TLTRO (Target Long Term Repurchase Operations) for Rs. 50000 crore and at least 50% of this amount must go to small-sized NBFCs & MFIs. These investments must be made within one month of RBI auction. RBI provided special refinance facility for Rs 50,000 crore to NABARD (Rs.

¹¹<https://economics.rabobank.com/publications/2020/march/coronavirus-economic-impact-covid-19-on-india/>

¹²<https://www.indiatoday.in/news-analysis/story/trade-in-the-time-of-covid-19-the-economic-impact-of-coronavirus-on-india-and-beyond-1661118-2020-03-29>

25,000 cr), SIDBI (Rs. 15,000 cr) & NHB (Rs. 10,000 cr). RBI shall assess the situation and step up level of liquidity support. RBI recently cut repo rate by 75 bps to 4.04% in its emergency Monetary Policy review meeting. Reverse Repo rate has been reduced by 25 bps to 3.75% from 4% which shall curtail commercial banks from parking their excess money with RBI.

The RBI has extended the realization and repatriation period of export proceeds made upto or on July 31, 2020 to 15 months from the date of exports. Earlier, the value of the goods or software exports made by exporters is required to be realised fully and repatriated to the country within nine months from the date of exports. This will enable the exporters to realise their receipts, especially from COVID-19 affected countries, within the extended period, and also provide greater flexibility to exporters to negotiate future export contracts with buyers abroad. Export activities have been disrupted in the wake of the pandemic and lockdown in many countries.

RBI has formed an advisory committee to review the 'Ways and Means Advances' limit for State governments and Union Territories. The 'Ways and Means Advances' is a scheme that helps reduce mismatches in receipts and payments of the government. Under this scheme, a government can avail itself of immediate cash from the RBI. It is a short-term loan given by RBI for a period of 90 days at repo rate. In case the Central/State Governments are unable to repay this advance money beyond 90 days then it shall be treated as overdraft balance and 2% interest rate hike from repo rate shall be imposed on such advance. Till the panel submits its report, the RBI has increased the Ways and Means advances limit by 30% for States and Union Territories. The revised limits will come into force with effect from April 1, 2020 and will be valid till September 30, 2020. Recently, the Central Government has hiked Ways and Means Advances limit with the RBI by 60%.

Moreover, the RBI has deferred the implementation of Counter Cyclical Capital Buffer (CCyB) for banks. It has decided that it is not necessary to activate CCyB for a period of one year or earlier, as may be necessary. CCyB is the capital to be kept by a bank to meet business cycle related risks. It is aimed to protect the banking sector against losses from changes in economic conditions like recession. This is an important theme of the Basel III norms. Basel III norms is a result of international regulatory accord that introduced a set of

reforms designed to improve the regulation, supervisory and risk management within the banking sector, post 2008 financial crises.

RBI ensures that NBFCs have flexibility under current accounting standards to provide relief to borrowers. NPA classification will exclude the moratorium period. For large accounts under default, additional provisioning of 20% shall be required for not implementing resolution in 180 days. Further, banks have been directed not to declare and make dividend payout from FY20 until further notice. Liquidity Coverage Ratio requirements for the Schedule Commercial banks will be brought down from 100% to 80% with immediate effect. Inflation in the country could decline further and settle below 4%.

The recovery of economy after this pandemic is a complex process. The path to revival of the economy is dependent on the rise in cases in coming months, economic support policies (stimulus package announced by the government) and the behavior of private sector once the lockdown is lifted.

Predicted Recovery Scenarios

In the first Scenario, there could be a V-shaped recovery in case the virus is contained in April or May which allows the social distancing rules to be relaxed. Post May, there could be an unleashing of demand aided by the massive fiscal and monetary stimulus. Moreover, factories and services may be able to reopen for business smoothly post lifting of lockdown. Government efforts to stop companies from firing their workers will prove successful and unemployment recedes in the country. This was observed in China's manufacturing (Purchasing Manager's Index) PMI, in Feb 2020 where PMI drop to 35.7 and in March 2020 it recovered to 52.0.

In second scenario, there can be U-shaped recovery wherein Q1-Q2 there is sharp decline in GDP spurred by containment measures, in Q3 virus cases peak, caused bottoming in GDP and finally in Q4 recovery happens as policy makers help in bridging gap, vaccines appear on horizon and economic activity resumed. Assumptions which most favour U-shaped recovery are situations where virus lingers into June and social distancing rules need to be followed. While there is release of demand, but consumers don't race back to shops or restaurants post lifting of lockdown. Factories and other workplace take time to return to full capacity and not every job lost in the crises is won back. Companies need to

repay debts which they build up during the crisis. In this case, recovery shall eventually materialize, but not until late 2020 or beyond.

The worst case scenario shall witness L-shaped recovery where government have to deliver more stimulus after their previous efforts failed to spark demand, but that take time to arrange.

Fourth scenario there could be W-shaped recovery. In economic terms this would lead to a double-dip recession. Here, after the lifting of lockdown restrictions, the economy recovered but again in second half of the year we witnessed the second wave of virus hit the country.

Fifth scenario is a tick-shaped recovery also known as the “Nike swoosh”. Here the businesses and spending occurring slowly when economy resumes working and carefully the restrictions are eased. The level of economic output stays beneath the level of its pre-crises trend well in 2021. There is lack of animal spirit as people remain cautious of over-spending or taking long-distance trips, especially if they have to deal with debts. India might even benefit in the medium term, because firms want to rely less on China as their only manufacturing hub and shift (part of) their production to other countries, such as India. Japan is the first nation who insisted its companies to shift their production plants from China to their own country and the Japanese government shall provide incentives to their companies to reset the production capacity in Japan. South Korean brands such as Hyundai and POSCO, South Korean companies are in talks with Indian government for shifting its production capacity from China to India. This explains why it is expected a relative profound rebound of economic growth in 2021 and beyond.

Ultimately, however, these potential positive economic effects will only materialize over time and are a small patch on the wound for all the personal tragedy that is caused by the virus.

References

1. Dhoot, Vikas (March 27, 2020), How can India contain the economic impact of COVID-19? *The Hindu* <https://www.thehindu.com/opinion/op-ed/how-can-india-contain-the-economic-impact-of-COVID-19/article31176015.ece>
2. (March 13, 2020), Coronavirus: The Economic Impact of COVID-19 on <https://economics>.

[rabobank.com/publications/2020/march/coronavirus-economic-impact-COVID-19-on-india/](https://www.rabobank.com/publications/2020/march/coronavirus-economic-impact-COVID-19-on-india/)

3. Mukewar, Pushkar (March 29, 2020), Trade in the time of COVID-19: The economic impact of coronavirus on India and beyond, India Today, Online
<https://www.indiatoday.in/news-analysis/story/trade-in-the-time-of-COVID-19-the-economic-impact-of-coronavirus-on-india-and-beyond-1661118-2020-03-29>

- <https://www.youtube.com/watch?v=-nH0ddpKWvA>
5. RBI's Rs. 1 Lakh crore liquidity lifeline-Reverse Repo Rate cut by 25bps, StudyIQ education, Online Available: https://www.youtube.com/watch?v=RZ1x_77MAy0
6. What is Ways and Means Advances? StudyIQ education, Online Available: <https://www.youtube.com/watch?v=V3ThttxFxbI>
7. What is Ways and Means Advances? RBI raises WMA limit, StudyIQ education, <https://www.youtube.com/watch?v=BDBflmDie9o&t=595s>
8. Economic Recovery post COVID-19_5 experts PREDICTIONS, StudyIQ <https://www.youtube.com/watch?v=kmvllVv3dac>

**PROFESSIONAL CHALLENGES AND OPPORUNITIES FOR COMPANY
SECRETARIES IN TURBULENT TIMES**

CS Gaurav Agarwal

E-mail ID: gaurav_csca@yahoo.in

It has been a topsy-turvy start to the third decade of this century. COVID-19 has not only changed the contours of professional life but it has also brought with it various disruptions. Meetings, which earlier used to be in offices are now being conducted vide video conferencing with the respective participants at their home. The first & foremost challenge which the Company Secretaries are facing is that they have to undergo a drastic change in their way of working against their routine working culture. Moreover, jobs of many professionals are at stake as the economy is badly affected. On the other hand, Company Secretaries in practise are finding it difficult to retain their employees & bear unproductive costs. Many business houses which had scheduled various meetings before the outbreak of COVID-19 had to either postpone the event or else manage it through video conferencing somehow.

Although this period is very challenging in terms of survival of the economy, professionals, etc but as it is being rightly said that the time now is for “Survival of the fittest” i. e. only the strongest people or things can continue to be successful. Leadership generally evolves during times of uncertainty. Leaders not only need higher level of proactiveness & vision along with the ability to drive clearly and communicate their ideas & direction, but they need to have the courage to address various business challenges thrown at them.

A Company Secretary is an essential link between the entity and its stakeholders be it Board of Directors, government, regulatory bodies, etc. It is that essential part of the company which ensures that a company complies with all the provisions laid down by the law. Company Secretaries have to use the limited resources wisely to make the greatest impact. The key is to have a mindset that focuses on the opportunities evolving as a result of the current economic environment, as opposed to dwelling on the problems. After all, it is the positive approach which can do wonders even in adverse situations and in times of turbulence, uncertainty, and unprecedented change governance professionals have an opportunity to show what they are made of. The role of Company Secretaries is not only limited within the boundaries of closed Board Room, but who empowers in the process of nation building.

Company Secretaries can play a major role in rebuilding economy by following ways:

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- 1) Scheduling/arranging Board/General meetings through video-conferencing and teleconferencing by coordinating with the internal officers.
- 2) By documenting the discussions held in meetings vide video-conferencing in the minutes book.
- 3) By filing, registering any document including forms, returns and applications by and on behalf of the company as an authorized representative.
- 4) By acting as Compliance Officer & ensuring compliance with SEBI (Prohibition of Insider Tradings) Regulations, 1992.
- 5) By preparing various return & reports required for compliance with the tax laws & regulations.
- 6) By filing of forms/documents in electronic form with Registrar of Companies and other statutory authorities.

As per MCA circular, General Circular No. 10/2020 dated 23. 03. 2020, it is being clarified that spending of CSR funds for COVID-19 is eligible CSR activity. Together with the Human Resource Director, the Company Secretaries can keep in touch with the debate on Corporate Social Responsibility and monitoring all the development in this area and advising the Board in relation to its policy and practices with regard to Corporate Social Responsibility. Organizations falling within the ambit of CSR provisions can avail this opportunity with the advise of Company Secretary professionals.

Various measures which can be taken by ICSI for the betterment of profession in this

- 1) To organize webinars related to technology. As we are living in a dynamic world where new business models and practices are being developed every day, it is the need of the hour to be equipped with latest technology tools& IT skills to serve in an efficient manner.
- 2) To organize training programmes on soft skills development. Emphasis must be placed on developing soft skills so that the professionals can duly put up their ideas which gets implemented in running responsible businesses and successful ventures.
- 3) Placement support need to be strengthened both for fresh & experienced professionals in this hour of crisis.
- 4) To provide e-learning modules in various topics in law, banking, taxation, etc for the enhancement & upgradation of knowledge of the professionals.

- 5) To provide online certification courses, workshops, post membership qualification courses for development of professionals and nurturing of their talent in the right direction through the right experiences.
- 6) To organize webinars on motivational classes since at this juncture, it is equally important to keep the professionals in a right frame of mind so that they remain motivated even in adverse situations.

References

- Clarification on spending of CSR funds for COVID-19, (March 23, 2020), MCA General Circular no 10/2020, Online Available: http://www.mca.gov.in/Ministry/pdf/COVID-19_23032020.pdf
- Role of Company Secretary, Online Available: <https://www.icsi.edu/student/role-of-company-secretary>

**HEALTH CRISIS RESULTING IN ECONOMIC CRISIS: IMPACT ON
COMPANY SECRETARIES**

CS C. N. Kranthi Kumar

E-mail ID: officer_in_default@yahoo.com

Abstract

The problem of scarcity of resources which arises before an individual also equally arises before an economy. These problems are also called as “basic problems” of an economy and **“all other economic problems cluster around these basic problems”**.

The global pandemic of COVID-19 has helped to resolve the climatic and environmental crises but resulted in fluctuations in economic activity, which generally do not follow a mechanical or predictable periodic pattern. **So, as an individual the Company Secretary is no exception, and has to face the turbulent times.**

Further, there are no shortcuts for immediate revival and rebuilding tasks in mixed economies, especially in a country like India. Nevertheless, quick and difficult choices, taken by both the Individual and Government, will make up to the revival and rebuilding of economy in a short span of time.

Understanding turbulent times

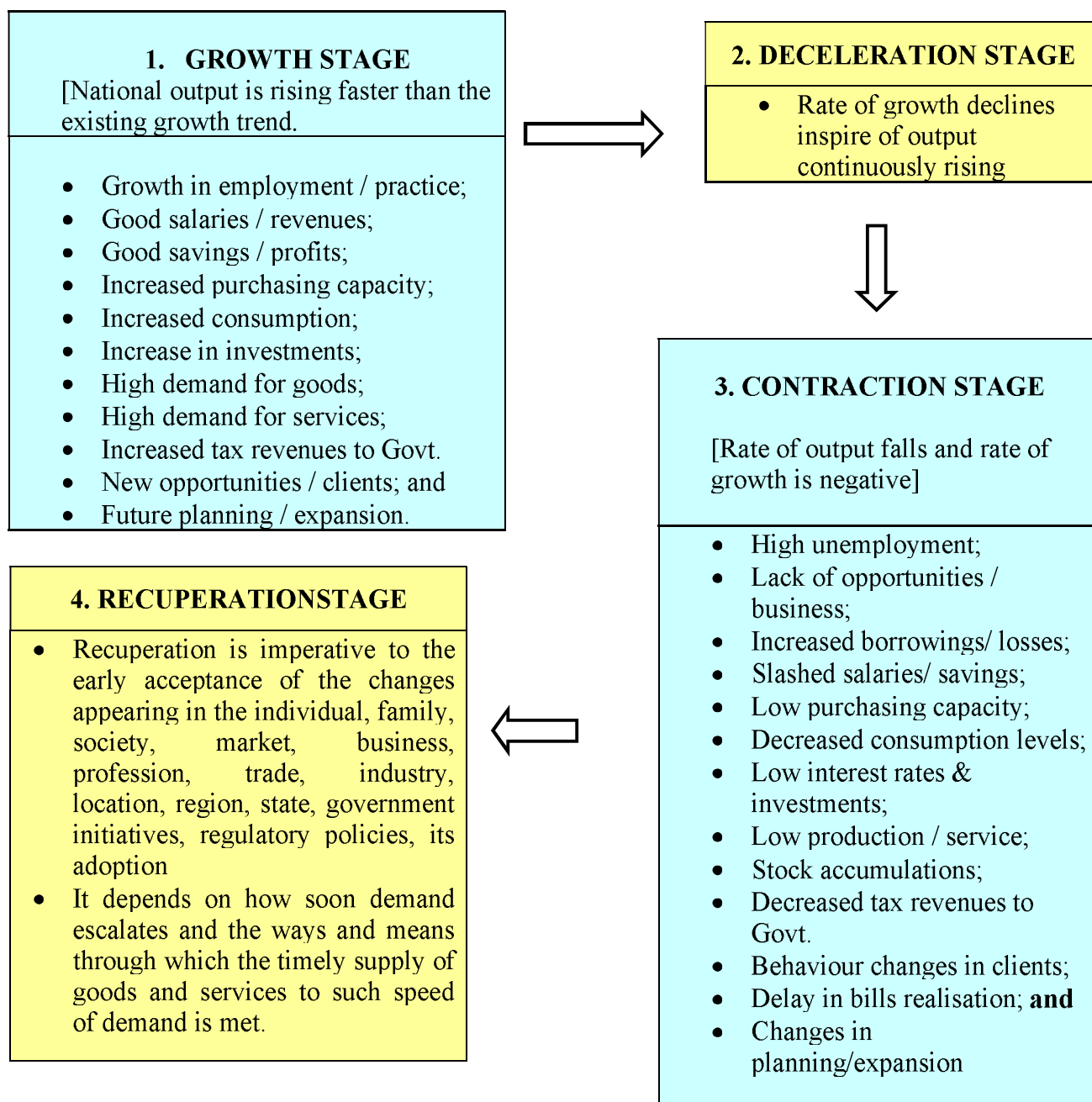
Turbulent Times are different from other critical situations as the economy has to operate in a volatile, uncertain, complex and ambiguous environment. These situations are characterized as:

- (a) Large;
- (b) Uncontrollable;
- (c) Scale high;
- (d) Have increased velocity;
- (e) Frequently fluctuating;
- (f) Have cascading effect;
- (g) Have unclear patterns of evolution; and
- (h) Create chaotic situations.

The impact on Company Secretary as individual

The Company Secretaries who are in employment or in practice may get impacted in the present turbulent times, which is illustrated with the example of four stages of economic cycle given below, which consists of (1)Growth Stage (2)Deceleration Stage (3)Contraction Stage and (4) Recuperation Stage:

ECONOMIC CYCLE



Slowdown in economic activity and role of Company Secretary

In the present time, economy is in between the process of deceleration and contraction where there is slowdown experienced due to lockdown situation. The Company Secretary as a member of the Institute of Company Secretaries of India [ICSI] and as an individual unit in the economy can play his / her role in rebuilding economy by:

- a) Maintaining emotional resilience;
- b) Accepting the behavioural changes;
- c) Maintaining continuous social dialogue [Keep in touch with all];
- d) Not getting polarized;
- e) Setting only survival goals and then short-term goals;
- f) Finding alternative resources;
- g) Developing innovative approach;
- h) Designing new working models;
- i) Defining opportunity cost for required demand [Opportunity cost is the value of alternative foregone in order to have something else];
- j) Avoiding conspicuous consumption of goods or providing services [Consuming goods or providing services that are meant for adding to one's social prestige];
- k) Avoiding unreasonable and irrational demands to Government;
- l) Following the regulatory policies of the Government;
- m) Holding strong confidence in Government and their immediate initiatives;

The suggestive Future Roadmap for ICSI

- a) ICSI can “re-test and re-evaluate its strategies” keeping in view the social, financial, technological, environmental and political changes in the economy.
- b) ICSI can protect the jobs of the Company Secretaries in employment and can generate new job opportunities in this turbulent time by representing before statutory authorities for taking stringent actions against corporates for non-appointment of Company Secretary in employment as per the provisions of the Companies Act, 2013.
- c) ICSI can make further representations to Hon'ble Minister of Finance and Corporate Affairs for inclusion of Company Secretary in the definition of “Accountant” under the explanation of Section 288(2) of the Income Tax Act, 1961, with which the “new source of work can be created for Company Secretaries”.
- d) ICSI can now rigorously promote Health Insurance and CSBF Membership advertisements for student/member-families or offices in view of present pandemic situation as everyone's concern now is social security.

Special Focus on the role of Micro, Small and Medium Enterprises (MSME) sector in revival of the economy

The MSME sector contributes around 30% of share in Gross Domestic Product (GDP) of Indian economy as per the Central Statistics Office (CSO), Ministry of Statistics & Programme Implementation. As per the National Sample Survey (NSS) during the period 2015-16, there were 633.88 lakh unincorporated non-agriculture MSMEs in the country engaged in different economic activities, and MSME's have created 11.10 crore jobs in rural and urban sectors.

So, the role of MSME's in revival of economy is definitely an important factor as MSME sector in the past 5 years had contributed dynamically in the industrial, economic and social development of the economy by giving new entrepreneurs, largest employment opportunities, maintaining low capital cost, producing diversified range of products/services for domestic and global markets, reducing regional imbalances, assuring more equitable distribution of national income and wealth.

Therefore, in this turbulent times, the MSME sector shall be a yardstick to the economy rebuilding, and the Company Secretary can be part of rebuilding by taking assignments of MSME's.

Customized Focus on the Startups

Startups working towards innovation, development, deployment or commercialization of new products, processes or services driven by technology or intellectual property have single point of contact, less compliance cost, more focus on core business, quick information sharing platform, funding support, credit guarantees, tax exemptions, legal support, ready advertisement platforms, harnessing of private sector expertise, relaxed norms and faster exit.

So, as earlier said in point "Slowdown in Economic Activity and Role of CS Professionals", the Startups will drive sustainable economic growth and generate large scale employment opportunities, as in the present turbulent time, the demands is for innovation, development and new products/processes/services, and the Company Secretary can be part of rebuilding economy by actively taking assignments and bringing more transparency for Startups.

Central problem of economy and hard choices

The problem of scarcity of resources which arises before an individual also arises before an economy. So, the central problem of economy shall be:

- a) which goods / services needs to be produced / provided;
- b) how much in quantity / measurement;
- c) what technique should be adopted;
- d) for whom goods / services should be produced / provided;
- e) what should be the limit of tax reliefs for individual / corporates;
- f) the amount of bill payments by the Government to private sector;
- g) whether rural and small projects should be taken immediately;
- h) whether to focus first on demand contraction; and
- i) whether to strengthen first the supply chain,

leaves no option but to make a quick and hard choice for starting the recovery and rebuilding of the economy which may take at least 3 to 6 months of time, and will depend on how soon demand starts and how soon timely supply of goods and services to such speed of demand is met.

The hard choices made by the Government will result in difficulty in acceptance, implementation issues, unrest, dissatisfaction, and revolt either from individual, unit, locality, segment, firm, business, sector, market and the industry, “as there are no shortcuts for revival and rebuilding of economy”.

Conclusion

The present impact of COVID-19 brings hardship on every Company Secretary, as everyone independently as an individual or a unit in the economy have to start dealing with all the areas of crisis at one time by making difficult choices.

However, Company Secretaries by nature of their work, possess multi-disciplinary professional skills and can work towards effective utilisation of scarce resources, and make good choices for self and for others under the conditions of uncertainty.

Also, Company Secretaries are self-resilient due to inter-personal traits, so hopefully I am of the opinion that the turbulent times may not have any long-term effect on the profession.

References

- 1) Impact of Coronavirus on Indian Business - FICCI Survey - Mar 15 to 19, 2020.
- 2) Tawfik Jelassi (year of publication)- Leading in Turbulent Times, Online available at [<https://www.imd.org/research-knowledge/articles/leading-in-turbulent-times/>]
- 3) How COVID-19 will redefine work practices in India- webinar hosted by Niti Aayog CEO and India Director of the World Bank, NASSCOM President & Others, Online Available at [<https://in.finance.yahoo.com/news/rise-gig-economy-stronger-social-112122409>]
- 4) ICSI (May 2017), Study Material - Foundation Programme - Paper 3 - Business Economics - Printed at IPP.
- 5) www.msme.gov.in
- 6) www.startupindia.gov.in

COMPANY SECRETARY- A HOPE FOR FUTURE!

CS Anushree Khunteta

E-mail ID: anushreekhunteta1395@gmail.com

INTRODUCTION

Everybody must have definitely heard a phrase once in their life i. e. Blessing in disguise. The phrase '**A Blessing in Disguise**' refers to something that act as a catalyst in the worst times. Well, talking about the worst, the outbreak of COVID-19 spreading across the globe is affecting each and everything from roots to sky. Taking into consideration the corporates, they are facing extreme crises. Thus, it is quite vivid that the profession of a Company Secretaries happens to be a blessing in our corporate world. From being a guardian to representing the company as a compliance officer, it signifies a great, leadership and influence. Even from clerical part to administrative, their role is indeed unfathomable.

“NO ONE KNOWS WHAT THE FUTURE HOLDS, EXCEPT ONE WHO HOLDS THE FUTURE”

Well, this statement clearly indicates the future of our country lies in the hands of the people who can bring ground breaking changes in the country. However, when situation is not in our hands and when we are fully in control of certain external factors, such as COVID-19 in our case, we end up fee stranded and unable to do a thing. It feels like . At the end, the ultimate bearers shall be one who is thriving to bring change. So are the Company Secretaries who want to go into every nook and corners just to get things done in an effective and prolific manner.

CHALLENGES FACING COMPANY SECRETARY

When it comes to enduring the challenges, the Profession of a Company Secretary is one of such kinds. Honesty and discretion, efficient time-management skills, a flair for championing a team ethic and the ability to cope with pressure, deadlines and multitasking is what it takes to be a well-known Company secretary.

We are constantly noticing that the Ministry is trying to morph the law for the purpose of good corporate governance. However it is also apparent that there is an utmost need of Company Secretaries in our country for better transparency.

But the recent amendments in the Companies Act, 2013 is enough to hit hard on the Company Secretaries. The smash by the Ministry of Corporate Affairs pertaining amendment in the limit or appointment of whole time Company Secretary **on 06/01/2020 by Companies (appointment and managerial personnel) Amendment, Rules 2020** is clear nod for the profession in disdain.

NEED OF THE HOUR

There is a need for such a proactive professional in order to run the company. They are no less than a watch dog that constantly monitors the highs and lows of the company.

As the world endeavours to rise to the challenges that COVID-19 has presented and despite implementing certain measures to curtail the spread of COVID-19 infections in the country, it has been revealed that the majority of professionals believe the outbreak has adversely impacted their way of working.

There has been volatility among respondents who affirmed that the novel COVID-19 pandemic has influenced their way of working and as a result they have shelved their business travel plans due to this.

Company Secretaries in the IT sector are getting hit hard by such an outbreak, and this is further followed by the import and export sector. Digging deep inside, you may realise, essential services sectors such as the health care sector and Aviation sector are the most impacted industries by the pandemic.

Company Secretary Professionals must follow a holistic approach. There could be some situation which is outside the purview of Company Secretaries but they must be able to withstand all of that. Being possessed with so many qualities is like a crowning achievement for the company. But unfortunately, whether it is finance, secretarial, compliance, marketing, liasoning officer, accounts and such other related fields, the company secretary is hitting the nail on the head. It has affected their working and productivity is at its extreme low.

Though the ultimate resort is getting work done from home. But if we throw light at the working of Company Secretaries and their role, you may find that it is not restricted to one

place. It is a profession that involves multitasking and involves drifting to and fro. Though they are still managing and trying hard to deliver the best possible however, this is something costing an arm and a leg to the companies.

Due to this outbreak, all the working professionals are finding suitable job opportunities as they are going to get the sufficient remuneration which they deserve. There could be some situations where you have to prove your worth and have to work extremely hard. It is a proud feeling that our Ministry is still fighting tooth and nail and trying to not let this outbreak affect the business to its utmost possible. **The recent circular dated 8th April bringing clarity on the modalities to be followed by the Companies for conduct of EGM's is praiseworthy.**

ROLE OF COMPANY SECRETARY IN REBUILDING ECONOMY

-Keeping in view the vision to raise the standard of living of our people. The role of company secretary is most valuable in this journey. They are not going to help in wealth creation but also see to it that the rule of law has been applied, in both letter and spirit. Honesty, sincerity and hard work are certainly going to strengthen the economy as well as democracy.

Due to the outbreak of the pandemic COVID-19, Companies have either faltered or have come to a standstill. As a company secretary, you shall require to handle the steer and play the role of governance professional and an internal business partner. It becomes the duty of a company secretary to ensure that the stakeholders are able to understand the difference between profit and profiteering, and comply by laws. Similarly, you must deliberate on issues where we need to improve, so that mistakes or limitations of the past are adequately addressed.

A Blueprint

India has chalked out a blueprint to enhance its brand value as a destination for international business and investment. In this effort, how you implement company laws in a fair and transparent manner has a critical bearing.

The role of Company Secretaries is going to decide some block of the country. Their decisions impact the economic reform agenda and our Ease of Doing Business efforts. The professionals must keep the trust corporates have placed in them, once and always.

MEASURES FOR THE BETTERMENT OF PROFESSION IN THESE TURBULENT TIMES

In this outbreak, we the companies Secretaries are not an individual personality. We have to be one and become a part of our fraternity who are doing the best possible for the betterment of our country and profession. United we can withstand any issues that come in our way along. By acting as a team, we would be able to reduce the repercussions of the outbreak. The Institute of Company Secretaries of India has countrywide presence. All the offices are at regional level and central play a key role in bringing uniformity in the country.

The institute having huge recognition in various countries can spearhead in forging partnerships and strategic tie ups which can prove to be fruitful for us.

Moreover, by having a vast education network and by doing more hard work, it would be successful in skilling thousands of youth. It is important on the part of ICSI being in the role of education; it becomes the moral duty to inculcate a high sense of ethics and commitment in our youth. Therefore, some kind of soft skills and new age skills are what need to happen so that people can develop a sense of confidence and speak for themselves without hesitation. They are capable of taking on the world that is dynamic.

There must be a kind of webinar where the professional shall discuss and present a PPT suggesting changes to be done for the betterment of the profession. Initiatives to support women empowerment, community development and youth mobilisation are something which we need to put our eyes on. This can bring huge transformation when it comes to literacy and spreading education. It is thus well said,

“PADHEGA INDIA TABHI TO BADHEGA INDIA”

This is a profession who does not follow any rituals and taboos. There is no cast, creed, region, religion barrier. It is all about your efforts, dedication, passion, determination.

Contribution of a certain amount towards PM CARES as a CSR initiative to support the government in the fight against COVID-19 is indeed praise worthy.

Look for ways to Add Value:

Company Secretary is in itself a holistic course, but there are a lot of career advantages in this recession, especially if you already have a job. Acting like and working like an owner really helps. Demonstrating how much you care and want to get things done right the first time can speak volumes. Asking you, what I can do better, what I can do differently, what may need to be changed or improved. Continue to be a team player. This may have great advantages in itself especially if you gain more knowledge about a particular topic or process or learn something completely new. This makes you more valuable and appreciable. This is something ICSI should take on lead and make them understand and learn other things that can help them grow. ICSI is a platform through which you can share your views and share some skills that are definitely going to bring Icing on the cake.

News Updates:

As the pandemic is hitting hard and professionals may find difficulty in finding the suitable job opportunities to give their career a break. So in such a case, seekers must not only reiterate what you have studied so far but must also be aware of what is going on in our country. ICSI can conduct certain competitions which should be compulsory for the members and students. The students and members should be selected on lottery basis and they have to present their views and in reward some kind of PCH hours for members and for students, a participation certificate.

Tracking

With the recent ECSIN generation, it proves to be a great initiative to track the employees in work. There should be a track of those professionals who have ceased from their job. So in such a situation, it will become easier to track the people who are in need of a job and with the help of networking, they are able to get decent opportunities.

Providing platform to Discuss

The most important thing to pay attention is towards the emotional quotient. Sometimes, in the rage of getting a good job and decent earning and despite putting in a lot of effort the members are unable to get what they deserve. In such situations, they put themselves in

guilt of not being able to make their parents proud and take dreadful steps. So keeping this in mind, it is very important to have a healthy mind to kick start your career with a great zeal. Therefore, the Institute should hold seminars and discuss some of these problems and motivate them on ways to overcome difficult situations. This can really help in boosting their career.

CONCLUSION

Our integrity and honesty determines our commitment to a just society. The expectations are many, and we must stand up to them. The role of the company secretary has thus moved away from that of being a mere Compliance Officer to being a Key Managerial Personnel occupying a leadership role for building the brand value and ensuring continuous growth of the company. We can confidently state that behind every successful board is a competent company secretary.

References:

<https://www2.deloitte.com/ie/en/pages/legal/articles/changing-role-secretary.html>

https://en.wikipedia.org/wiki/Company_secretary

<https://www.elementalcosec.com/guides/roles-and-responsibilities-of-a-company-secretary/>

<https://timesofindia.indiatimes.com/readersblog/post-COVID-19-impact-on-working-culture/>

<https://presidentofindia.nic.in/speeches-detail.htm?736>

<https://economictimes.indiatimes.com/wealth/earn/finding-a-new-job-in-a-recession-will-be-a-challenge-heres-what-you-should-do/articleshow/74617444.cms?from=mdr>

REGULATORY REFORMS IN THE COVID-19 SITUATION AND THE ROLE OF COMPANY SECRETARIES

CS Deepak C. S.

E-mail ID: deepakcs@aplapollo.com

I. INTRODUCTION

With the rapid changes that have taken place in the regulatory environment especially after the enactment of Companies Act, 2013 the profession of Company Secretaries has undergone sea changes both on the employment and the practice side. With increased recognition and challenges presented by the Act and reliance placed by Regulators and Corporates upon professionals, the profession has evolved and has helped CS professionals to create a niche for themselves. The Institute of Company Secretaries of India (ICSI) has played a significant role in re-positioning the profession by its active participation in MCA deliberations during the course of enactment of the Act, issuing clarifications and making amendments to the Act and the Rules, as and when required, and has always acted as a bridge between Corporates and the Central Government. The profession has time and again faced various challenges posed by the ever evolving stringent compliance regime and has successfully overcome those challenges. However, the latest challenge in the form of COVID-19 Pandemic has caused turmoil in all facets of life including CS profession. It is tough to assimilate the enormity of the challenge at this stage since its effects are so far-reaching that it is going to change the world for good in terms of the change in approach to conduct of business and the life in general. The economies which currently transcend beyond physical and cultural boundaries, may restrict themselves to local spaces.

The way COVID-19 has set its footprints presents a situation of alarming proportions and as of now it seems that the marks are too dark and deep to be erased soon. Even if COVID-19 is contained soon, its ill effects shall be visible for a fairly long time. Demand for certain key products/services that are essential for survival of humanity will outweigh the others for a while. The Pandemic has abruptly resulted in forced lockdown of all businesses and every Corporate and those associated with it including the professionals are facing uncertainty about how soon normalcy would be restored. Having said so, the lockdown was imperative so as to protect human life, which is far more important than anything. The lockdown has forced mass migration of labour force from their workplace in major cities to their native places and with the public transport coming to a standstill, they are stuck at

places *en route* leading to more exposure to COVID-19 and chances of community spread, which issue is also being addressed by the Government by employing various measures. The impact of the Pandemic will be seen in full force in the coming days and months on all Industries and businesses, labour force, employees, self-employed/freelancers and professionals including CS. The Pandemic may curtail advent of new entrants into business ventures and in all likelihood force all existing businesses and the Government(s) to re-align their goals and objectives. The focus may shift from growth and innovations in the existing lines of business to essential segments wherein sustenance and self-reliance shall

The worst affected due to this pandemic would be the start-ups and those who were in expansion mode. The start-ups have provided a new vision to the country and most of them being foreign funded and compliance being their priority, Company Secretary plays a pivotal role therein. The pandemic having spread worldwide, overseas corporates despite being usually attracted to offshore avenues, would henceforth be skeptical in investing outside their country as survival would be preferred over growth.

II. REGULATORY INITIATIVES

The Central Government has given relaxation on various compliances for corporate which is an appreciable step. Let us analyse the measures taken by The Ministry of Corporate Affairs (MCA), to make an assessment of the impact upon CS profession.

MCA has announced fresh start-up schemes¹ for both Companies and LLPs by waiving additional filing fee for certain forms/documents. Further, various measures like permitting of meetings of Board for certain prohibited items and for EGMs² via video conferencing or other audio visual means, etc. till 30. 06. 2020 and exemption from holding meetings with maximum gap of 120 days etc. till 30. 09. 2020 have already been announced and notified. Similar relaxations have been announced by SEBI for listed entities in respect of compliances under various listing Regulations³. Tax related compliances, both direct and indirect, have also been given time⁴ and more may be on the anvil. RBI has also announced various measures for providing relief in respect of servicing of debts by introducing moratorium period of three months⁵. It has also revisited the key ratio for ensuring more liquidity in the system. All these measures have been taken keeping in mind the requirement of (i) providing relief to the stressed economy, (2) ensuring social distancing and (iii) enabling the professionals and Board members to work from home.

The Government has advised all corporates to inculcate the culture of work from home⁶. While this may be productive for the service industry especially IT intensive ones, for other sectors like manufacturing, automobile etc. except for office operations, this may not work. However the challenges being faced by almost all corporates and small business organisations are yet to be addressed by the Government in specific since these entities are generally short of cash reserves or being start-ups, have almost negligible credit lines for doing their regular business. The Pandemic has resulted in complete stoppage of their business activities while they continue to remain liable to service the principal and interest obligations of term loan and working capital facilities and pay for other expenses despite nil revenues. The Government has also advised all corporates and other business organisations not to deduct salary/wages of its employees / workers for the period under lockdown and to continue to retain them⁷. This step is not taken in good spirit by the corporates, since they feel themselves to be burdened all the more besides the troubles caused by COVID-19 and cases of insolvency may witness a sharp rise, though the Government intends to give a six months' moratorium. The Government may consider allowing business entities to release reduced salary/wages for a few months and create a provision for the balance part which can be paid to employees in future in a phased manner when the situation improves.

In the light of the relaxations given by the Finance Ministry and the MCA, the compliance regime stands relaxed and the chances of violations and non-compliance without any *mala fide* intentions on the part of promoters and businesses might increase to that extent and the Regulators' take on it would be an interesting watch. The relaxations have brought a sigh of relief to the corporates, however it has made the task of Company Secretary in employment as well as in practice, all the more challenging. The corporates should endeavour to avail of the relaxations in the best possible extent with the guidance of CS.

III. A FEW CONCERNS

One of the major concerns in this situation is that corrupt entities may also try to take advantage of the situation by creating artificial shortage of essential products and/or overpricing them. With the prices of shares of some of the companies in the strategic industries likely to fall, they may become easy target for acquisition by corporate giants leading to monopolistic practices. The CS / KMPs / Board of such companies and the Regulators have to remain vigilant in this regard. Recently, SEBI refused to entertain

requests from promoters to extend the closure of trading window for dealing in shares of their companies and make it concurrent with the lock down period, which is a bold and much needed step, since insiders may take advantage of the volatility and deal in the shares with the luxury of having insider information. The Government also has come up changes in FDI Policy restricting foreign direct investments by entities from countries sharing land border with India⁸. The role of CS becomes utmost important here since they have to advise their promoters about these and any malpractice should be discouraged under all circumstances.

IV. HOW CS CAN RISE TO THE OCCASION

Gradually the country would be able to contain the health related hazards, but the lateral effects of low demand and productivity and slowdown in economy would take time to subside. The Pandemic may also give rise to various issues which if not dealt with assiduously, may result in avoidable litigations. There could be various instances of breach of contract due to *Force Majeure* and other reasons and the CS would be well positioned to guide his/her Company through such issues. The role of CS as KMP becomes very crucial in such a scenario. He/she is not only duty bound to keep an eye on all such issues but also inform/engage the Board and other KMPs and professionals/consultants by acting as a facilitator, compliance officer and if need be, a whistle blower. For sure, the Pandemic in short run will impact the CS profession to the extent that all have to adapt themselves quickly to the new working style which includes conducting meeting through VC or OAVM (which is not very common in small and mid-sized companies), keep themselves and their Board updated about the measures being announced/likely to be announced by the Government which may have an impact on business activities and/or functioning of the Company. There can be temporary loss of job or sluggishness in fresh hiring or even worst case scenario layoffs too may happen, however things will improve gradually after some time when the corporates begin to recover from the losses incurred due to this Pandemic and realign themselves to the transformed socio economic environment. Post this Pandemic, many companies may face themselves in difficult situations like litigations/encroachments/payment recovery/labour related issues. The CS is one of the key professionals who can assist the management in resolving all such issues quickly, effectively and amicably.

The impact of turbulent times due to this COVID-19 Pandemic on CS profession is not going to last long, provided the professionals take this challenge as an opportunity to prove themselves as an asset to various stakeholders they serve, and help them resolve their problems. The CS profession is touching new heights with the opening of new avenues in the form of Insolvency Professional (as Resolution Professional, Registered Valuers, Liquidators), Bankruptcy, Arbitration, Independent Director and demand for the services of CS professional may increase in time to come, *albeit* at a slower pace. The CS professional can play an important role in rebuilding the economy which at the moment appears a herculean task. The CS can act as a connect between various stakeholders (the Management, Promoters, Government Agencies, Independent Directors, Consultants, Employees, Labourers, Shareholders and Investors) to address their core issues which may be impeding the performance of the company. He/she can help the management in getting all required statutory approvals from various agencies, raise capital or debt by private placement or public offer, help in raise funds, act as a watchdog and a whistle blower to avoid any fraudulent practices.

V. A FEW SUGGESTIONS TO ICSI

ICSI may consider taking following steps and making more focused efforts for the cause of economy and for betterment of our profession in these turbulent times:

- a. The senior professionals should be encouraged to share their experience and knowledge with the younger lot. This can be done by organising more formal and informal interactive forum like webinars, professional WhatsApp groups, seminars etc.
- b. The CS in employment or PCS who are working with the top companies should be encouraged to provide an insight into their work culture. CS in practice may be invited to deliberate and deliver their point of view to the Board of Directors or senior management from time to time.
- c. It should be impressed upon the corporate entities about the need to involve CS professionals in the business activities and discussions to the extent that the compliance and governance issues are fully taken care of. The Institute should make more aggressive efforts to propagate the importance and role of CS professionals in the corporate world both as a governance professional and as an advisor. Because, as they say, “cost of non-compliance is much higher than cost of compliance”!

- d. Government Officials should be invited to attend the Seminars/Webinars and share their views about our profession and to do a reality check whether the CS as professionals are serving their profession diligently.
- e. The Institute can consider forming a core group of professionals with a balanced mix of seniors and juniors who after seeking views from professionals through interactive sessions/web based portals can form an action plan for the road ahead for revival of the economy and also for revamping the corporate compliance culture. This could offer the Government a different perspective to look at the problem!

References:

¹MCA General Circular No. 12/2020 dated 30. 03. 2020;

https://www.mca.gov.in/Ministry/pdf/Circular12_30032020.pdf

²MCA General Circular No. 14/2020 dated 08. 04. 2020:

http://www.mca.gov.in/Ministry/pdf/Circular14_08042020.pdf

MCA General Circular No. 17/2020 dated 13. 04. 2020;

http://www.mca.gov.in/Ministry/pdf/Circular17_13042020.pdf

³Please refer to various SEBI circulars from March 19, 2020 onwards: link to SEBI

[https://www.sebi.gov.in/sebiweb/home/HomeAction.](https://www.sebi.gov.in/sebiweb/home/HomeAction.do?doListing=yes&sid=1&ssid=7&smid=0)

[do?doListing=yes&sid=1&ssid=7&smid=0](https://www.sebi.gov.in/sebiweb/home/HomeAction.do?doListing=yes&sid=1&ssid=7&smid=0)

4

[https://pib.](https://pib.gov.in/PressReleaseIframePage.aspx?PRID=1607942)

[gov.in/PressReleaseIframePage.aspx?PRID=1607942](https://pib.gov.in/PressReleaseIframePage.aspx?PRID=1607942)

5

https://www.rbi.org.in/Scripts/BS_PressReleaseDisplay.aspx?prid=49582

⁶References can be found in MCA Advisory of March 19, 2020 and the various MHA notifications announcing/extending lock down

⁷MHA order dated March 29, 2020

⁸Press Note No. 3 (2020 series) dated 17. 04. 2020 of Ministry of Commerce & Industry,

https://dipp.gov.in/sites/default/files/pn3_2020.pdf

FORCE MAJEURE– FRUSTRATE OR NOT?
AN ANALYSIS ON HOW THE LEGAL TERM WORKS
CS DEVIKA S

E-mail ID: devika.soman@ymail.com

Force Majeure clause won't apply to coronavirus death claims in life insurance policies

“The Economic Times”

Force Majeure takes centre stage during COVID-19

“The India Legal”

Force Majeure is a French phrase meaning “a superior force”. A Force Majeure clause is a contract provision that allows a party to suspend or terminate the performance of its obligations when certain circumstances beyond their control arise. Such circumstances may render performance inadvisable, commercially impracticable, illegal, or impossible. The provision may state that the contract is temporarily suspended, or that it is terminated if the event of Force Majeure continues for a prescribed period of time.

The list of events to be covered under Force Majeure is a matter of negotiation between the parties.

A typical Force Majeure clause may be read as follows:

“Neither party shall be held liable or responsible to the other party nor be deemed to have defaulted under or breached this Agreement for failure or delay in fulfilling or performing any obligation under this Agreement when such failure or delay is caused by or results from causes beyond the reasonable control of the affected party, including but not limited to **fire, floods, embargoes, war, acts of war (whether war is declared or not), insurrections, riots, civil commotions, strikes, lockouts or other labor disturbances, acts of God or acts, omissions or delays in acting by any governmental authority;** provided, however, that the party so affected shall use reasonable commercial efforts to avoid or remove such causes of non performance, and shall continue performance hereunder with reasonable dispatch whenever such causes are removed. Either party shall provide the other party with prompt written notice of any delay or failure to perform that occurs by reason of Force Majeure. The parties shall mutually seek a resolution of the delay or the failure to perform as noted above. ”

So if, for example, a flood occurred that shut down a port, the seller planning to ship its goods through that port would not be liable for late delivery of the goods.

As such, the following elements should be addressed in a Force Majeure clause:

- Definition of Force Majeure events
- What happens when an event occurs
- Who can suspend performance and
- What happens if the Force Majeure event continues for more than a specified period of time

In countries like China, France, the concept of Force Majeure is codified under law. Whereas in countries like India, UK, the concept of Force Majeure is not codified but introduced in the contracts by way of an agreement between parties.

Force majeure” is governed by the Indian Contract Act, 1872. In so far as it is relatable to an express or implied clause in a contract, it is governed by Chapter III dealing with the contingent contracts, and more particularly, Section 32 thereof.

Section 32 provides for **Enforcement of Contracts contingent on an event happening -** Contingent contracts to do or not to do anything if an uncertain future event happens, cannot be enforced by law unless and until that event has happened. If the event becomes impossible, such contracts become void.

Where an agreement does not provide for Force Majeure or one does not fall within the Force Majeure clause, a party may have to look beyond the clause. For example:

“In the event either party is unable to perform its obligations under the terms of this Agreement because of **acts of God or damage reasonably beyond its control, or other causes reasonably beyond its control**, such party shall not be liable for damages to the other for any damages resulting from such failure to perform or otherwise from such causes”

The above clause does not provide a list of Force Majeure events instead uses a generic language throughout. In such a situation one may consider invoking Section 56. In so far as a Force Majeure event occurs de hors the contract, it is dealt with by a rule of positive law under Section 56 of the Contract.

Section 56 of Indian Contract Act 1872, otherwise termed as the “**Doctrine of Frustration**” reads as follows: Agreement to do impossible act - An agreement to do an act impossible in itself is void.

1. Contract to do act afterwards becoming impossible or unlawful. A contract to do an act which, after the contract made, becomes impossible or, by reason of some event

which the promisor could not prevent, unlawful, becomes void when the act becomes impossible or unlawful.

i. e. At the time of entering into contract, the performance of an act was possible and lawful but afterwards such performance becomes impossible or unlawful due to some event which the promisor could not prevent. Then such cases, the contract becomes void.

2. Compensation for loss through non-performance of act known to be impossible or unlawful. Where one person has promised to do something which he knew or, with reasonable diligence, might have known, and which the promisee did not know, to be impossible or unlawful, such promisor must make compensation to such promisee for any loss which such promisee sustains through the non-performance of the promise. ”

i. e. Where a person promised to do something which he knew or with reasonable diligence, might have known that it was impossible or unlawful to do but which the promisee did not know, then such promisor must make compensation to such promisee for any loss which such promisee sustains through the non-performance of the promise.

Prior to the decision in Taylor vs. Caldwell, (1861-73) All ER Rep 24, the law in England was extremely rigid. A contract had to be performed, notwithstanding the fact that it had become impossible of performance, owing to some unforeseen event, after it was made, which was not the fault of either of the parties to the contract. This rigidity of the common law in which the absolute sanctity of contract was upheld was loosened somewhat by the decision in Taylor vs. Caldwell in which it was held that if some unforeseen event occurs during the performance of a contract which makes it impossible of performance, in the sense that the fundamental basis of the contract goes, it need not be further performed, as insisting upon such performance would be unjust.

The law in India has been laid down in the seminal decision of Satyabrata Ghose v. Mugneeram Bangur & Co., 1954 SCR 310. The second paragraph of Section 56 has been adverted to, and it was stated that this is exhaustive of the law as it stands in India. What was held was that

“the word “impossible” has not been used in the Section in the sense of physical or literal impossibility. The performance of an act may not be literally impossible but it may be impracticable and useless from the point of view of the object and purpose of the parties. If

an untoward event or change of circumstance totally upsets the very foundation upon which the parties entered their agreement, it can be said that the promisor finds it impossible to do the act which he had promised to do. ”

The word “impossible as mentioned in Section 56 doesn’t mean literal impossibility to perform (like strikes, commercial hardships, etc.) but refers to those cases where a supervening event beyond the control of the parties (like the change of circumstances) destroys the very foundation upon which the contract rests. This would render the contract ‘impracticable’ to perform, and substantially ‘useless’ in view of object and purpose which the parties intended to achieve through the contract.

“In cases, therefore, where the court gathers as a matter of construction that the contract itself contained impliedly or expressly a term, according to which it would stand discharged on the happening of certain circumstances the dissolution on of the contract would take place under the terms of the contract itself and such cases would be outside the purview of section 56 altogether. Although in English law these cases are treated as cases of frustration, in India they would be dealt with under section 32 of the Indian Contract Act which deals with contingent contracts or similar other provisions contained in the Act. ”

The law of frustration in England developed, as is well known, under the guise of reading implied terms into contracts. The court implies a term or exception and treats that as part of the contract. However, Indian Law treats the two subjects of study completely different u/s 32 and 56. Therefore, where a Court in India while interpreting the contract, is convinced about the existence of an implied (S. 9) or express term in the contract, that the contract shall be discharged upon happening of certain event, the matter will be dealt u/s 32 and will be completely outside the purview of S. 56.

“In the large majority of cases however the doctrine of frustration is applied not on the ground that the parties themselves agreed to an implied term which operated to release them from the performance of the contract. The relief is given by the court on the ground of subsequent impossibility when it finds that the whole purpose or basis of a contract was frustrated by the intrusion or occurrence of an unexpected event or change of circumstances which was beyond what was contemplated by the parties at the time when they entered into the agreement. Here there is no question of finding out an implied term agreed to by the parties embodying a provision for discharge, because the parties did not think about the matter at all nor could possibly have any intention regarding it. When such

an event or change of (a) circumstance occurs which is so fundamental as to be regarded by law as striking at the root of the contract as a whole, it is the court which can pronounce the contract to be frustrated and at an end. The court undoubtedly has to examine the contract and the circumstances under which it was made”

The relief is given by the courts on the ground of supervening impossibility or illegality when it finds that the whole purpose of the contract was frustrated by the intrusion or occurrence of an unexpected event which was beyond what was contemplated by the parties at the time of entering into the contract. When such an event occurs which is so fundamental as to be regarded by law as striking at the root of the contract as a whole, then it is the court which pronounce the contract to be frustrated at the end.

Thus the Court concluded that a contract is not frustrated merely because the circumstances in which it was made are altered but the occurrence of an event which strikes at the root of the contract causing impossibility/impracticability of performance. The Courts have no general power to absolve a party from the performance of its part of the contract merely because its performance has become onerous on account of an unforeseen turn of events.

COVID-19 and Force Majeure

Force Majeure event generally includes Acts of God which is to be extended to cover epidemic or pandemic. States like Haryana, Bihar, Karnataka have already declared COVID-19 as epidemic. The Government of India has issued a clarification declaring COVID-19 as a “notified disaster”. Whether the ability to perform obligations under a contract on account of COVID-19 be covered as Force Majeure event would be subject to argument.

Conclusion

A Force Majeure clause cannot be implied under Indian law. It must be expressly provided for under the contract and protection afforded will depend on the language of the clause. In the event of a dispute as to the scope of the clause, the courts are likely to apply the usual principles of contractual interpretation.

In the absence of a Force Majeure clause, parties to a contract are left to the mercy of the narrow common contract law doctrines of "impracticability" and "frustration of purpose," which rarely result in excuse of performance.

IMPACT ANALYSIS OF TURBULENT TIMES ON COMPANY SECRETARIES

CS Deepak Seth

E-mail ID: deepakseth39@gmail.com

Since December 2019, the COVID-19 has grabbed headlines around the world as a successor to its cohorts in the corona virus family, like the Middle East Respiratory Syndrome (MERS) and Severe Acute Respiratory Syndrome (SARS). The disease, now classified as a pandemic by the WHO, has afflicted over 90% of all nations, with rapidly shifting epicentres. COVID-19 has already impacted the whole world more than any one of us was prepared for.

Impact of Turbulent Times on Profession:

Professionals claimed that the spread of COVID-19 will have a negative impact on the hiring activities across different industry verticals.

Meanwhile, professionals said their companies are taking active measures to fight the pandemic, including putting up relevant advisories, installation of sanitisers and cleansers at touch points, increasing cleanliness measures in offices, among others.

Surprisingly, it is revealed that work-from-home has ranked last in the measures being implemented by the Indian organisations. The spread of the novel coronavirus (COVID-19) has hit the businesses across the globe. In such difficult times, companies should focus on employee welfare. Organisations should be vigilant and take practical measures to ensure the safety of employees at workplaces,

Professionals will also have to face severe job losses across different sectors in India if the corona virus impact continues for few more months.

As more and more good people chase bad jobs, salaries will tumble and increments will vanish for a while. Jobs for Professionals will be most at risk as high salary jobs at the top of the job chain.

At the same time the entry level hiring for positions of Professionals will postpone as far into the future as possible. This is sheer job trauma staring at us in the near future

Manufacturing and other core sectors of the economy such as power, infrastructure, mining, agriculture will be cautious in hiring Professionals as they need cost cuttings. They are all impacted by the disruption in supply chains. Focus of these organisations will now be on bringing the business to normalcy.

In the retail segment the impact on Professionals can be severe currently due to the temporary shutdown in the supply chain.

On positive side, hiring for Professionals in e commerce and e logistics sectors is bound to grow in the coming months despite the COVID-19. Many people are preferring to buy items through the e-commerce sites as the physical retail has taken a back seat. At the same time hiring in the Pharma sector, FMCG and the telecom will be up in the coming months as these are sectors that will witness growth in the coming months.

The report by YouGov said more than eight in ten (84 per cent) business professionals surveyed claimed the coronavirus (COVID-19) had a large or moderate impact on their business.

A vast majority of urban Indian working professionals claim the coronavirus (COVID-19) has impacted their business. Although cancelled or delayed business trips emerged as the most visible initial impact of the virus, declining sales are expected to be the greatest commercial woe in the future the report highlighted.

Impact of COVID-19 Virus on Indian Economy

The economic impact of the 2019–20 coronavirus (COVID-19) pandemic in India has been hugely disruptive. World Bank and credit rating agencies have downgraded India's growth for fiscal year 2021 with the lowest figures India has seen in three decades since India's economic liberalization in the 1990s. However,

the International Monetary Fund projection for India for the financial year 2021-22 of 1.9% GDP growth is the highest among G-20 nations.

The pandemic is also an opportunity for us to rethink our economic growth path, which has come at a heavy cost to people and planet. According to the latest ESCAP assessment on implementing the 2030 Agenda for Sustainable Development, Asia and the Pacific is not on track to achieve any of the 17 Sustainable Development Goals (SDG) by 2030, with regression on several environmental goals.

For some of the sectors, the work-from-home proposition is posing implementation challenges as it has a direct bearing on the business operations. Various sectors have been affected such as:

- Auto
- Pharma
- Chemicals
- Electronics
- Solar Power
- Information Technology
- Shipping
- Tourism & Aviation
- Textiles
- Need for policy intervention

There is an urgent need to take instant steps to not only contain the spread of the virus, but also to address the key pain areas of the industry which can help in minimising the impact of the outbreak on the Indian economy and businesses. The Indian Government & RBI need to support the Indian industry and economy at this juncture in different ways:

- Maintain liquidity at surplus levels and provide special liquidity support for any companies / NBFCs / banks that come under strain due to intensifying risk aversion in financial markets or due to large demand shock.

- Increase credit limits for all regular banking accounts by 25 percent across the board. Also, Increase overdraft facility to state governments from the RBI. Pay the pending GST compensation immediately.
- IBC to be suspended for a short period for the aviation and hospitality sectors as they are the worst affected.

The Role of Company Secretary being in a Depressed Economy to REBUILD ECONOMY cannot be overemphasized:

- Company Secretary being Professional have contributed to the development of business in a depressed economy.
- Accounting reports preferred by Company Secretary are in compliance with the rules and regulations guiding the industry.
- A very large extent agreed that Company Secretary being assist in rebuilding a depressed economy.
- A form of continuous auditing should be ensured by the auditor, so that all reports are independently verified by trained and qualified auditors.

ECONOMIC DEVELOPMENT PROFESSIONAL ROLE

Professional	PRE-DISASTER ROLE	POST-DISASTER ROLE
COMPANY SECRETARY AS AN ANALYST	<ul style="list-style-type: none"> • Understand how possible disasters could impact local businesses /industries. 	<ul style="list-style-type: none"> • Understand current conditions/damage to critical industries, businesses, property and infrastructure. • Assess impacts on long-term viability of businesses/industries. • Provide cost/benefit analysis of recovery projects.

<p>COMPANY SECRETARY AS AN CATALYST</p>	<ul style="list-style-type: none"> • Establish Business Recovery Task Force to work on preparedness activities. 	<ul style="list-style-type: none"> • Participate in Business Recovery Task Force to identify immediate and long-term recovery efforts. • Garner input and support for critical recovery initiatives. • Update strategic plans to match current realities.
<p>COMPANY SECRETARY AS AN GAP FILLER</p>	<ul style="list-style-type: none"> • Outreach to public and private institutions about setting up a bridge loan program for a disaster event. 	<ul style="list-style-type: none"> • Conduct concerted outreach to reconnect with businesses and identify at-risk companies. • Assist with bridge-loan financing until SBA loan approval. Provide business recovery assistance and services. • Develop programs/initiatives as needed to support long-term recovery.
<p>COMPANY SECRETARY AS AN FUNDING SEEKER</p>	<p>Advocate for mitigation and preparedness efforts.</p> <p>Advocate for tiered business re-entry procedures.</p> <p>Address impacts/adequacy of community's emergency management plan from businesses' perspective</p>	<ul style="list-style-type: none"> • Seek funding opportunities for recovery initiatives. • Communicate priorities and need for policy changes to state and federal leaders
<p>COMPANY SECRETARY AS AN EDUCATOR</p>	<p>Educate small businesses on business continuity planning</p> <p>Educate business community on community's emergency management plan</p>	<ul style="list-style-type: none"> • Facilitate flow of accurate information to businesses. • Communicate “open for business” and “we need help and resources” messages. • Develop and distribute a disaster recovery guide.
<p>COMPANY SECRETARY AS AN</p>	<p>Engage key stakeholders in visioning process to identify scenarios for post-disaster</p>	<ul style="list-style-type: none"> • Envision how community can build back stronger, more resilient.

VISIONARY	redevelopment	<ul style="list-style-type: none"> • Connect public/private resources for building back a more resilient community
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Role played by Company Secretary in Rebuilding Economy

Advising Businesses

Below is a brief overview of initial steps businesses should be taking to cope with and help contain COVID-19

- Communication: a central component of managing crises is consistent communication with employees, business partners, your community and other stakeholders to minimize the disruption. This includes stating an appropriate policy to reduce your business’s exposure to COVID-19. Outline the precautions that your employees need to take as guided by the CDC.
- Explore alternative work options: your organization should be testing technologies (such as server access) in the event that meetings need to occur virtually, or employees need to work offsite.
- Identify your critical functions and determine the key employees needed to fulfill those functions. It may be necessary to minimize their exposure to other possible unknown carriers, including other employees.
- Assess the possible financial implications of revenue loss, travel restrictions, supply chain disruptions, and explore external resources that could assist in alleviating those pressures (e. g. federal or local funding options).

A short list of measures to be taken by ICSI for betterment of Profession”ICSI”

1. Do your own continuity planning, if you haven’t already.
For example, how will you effectively communicate with internal staff and external stakeholders? If your office is closed, is staffs resourced to work from home, possibly for more than a couple of weeks?
2. Stay up to date on what’s happening with businesses in your community.
Use all information channels at your disposal – monitor social media and mass media; make phone calls. Send out a business survey that asks about economic impacts and ideas for what types of services or programs would help.
3. What can you do to support businesses in your community?

Push out relevant news about federal, state and local resources as they come on line. Try to spread knowledge vide Webinars. Provide online Short term certification courses.

References

<https://economictimes.indiatimes.com/magazines/panache/COVID-19-impacts-professional-life-jobs-at-mnacs-to-be-most-vulnerable-virus-affects-hiring/articleshow/74710055.cms>

<https://www.theweek.in/news/biz-tech/2020/03/23/COVID-19-impact-severe-job-losses-likely-across-sectors-in-india.html>

https://en.wikipedia.org/wiki/Economic_impact_of_the_COVID-19_pandemic_in_India

<https://www.quora.com/How-will-COVID-19-affect-the-world-economy>

<https://www.coursehero.com/file/23943118/Unit-12/>

<https://www.worldometers.info/coronavirus/>

IMPACT ANALYSIS OF TURBULENT TIMES ON COMPANY SECRETARIES

Joydip Chakraborty

E-mail ID: joydipchakraborty91@yahoo.in

INTRODUCTION

In today's age of automation when people are already being affected by stress syndrome, a five letter word "**COVID-19**" has increased the stress to a much higher level and affected people from all over the world mentally, physically and financially. The analysis by the UN Department of Economic and Social Affairs (DESA) said the **COVID-19** pandemic is disrupting global supply chains and international trade. With nearly 100 countries closing national borders during the past month, the movement of people and tourism flows have come to a screeching halt. Millions of workers throughout the world are facing the bleak prospect of losing their jobs. Governments are considering and rolling out large stimulus packages to avert a sharp downturn of their economies which could potentially plunge the global economy into a deep recession. India is also not an exception and really the present situation is a problem for the Indian Economy, Central Government and State Governments.

The present situation will surely affect the profession of Company Secretaries just like any other profession specially when the time is the year end for the Financial Year 2019-2020. However, we should keep in mind that as a bright day comes after a dark night, similarly the Indian Economy will improve and we being a part of **The Institute of Company Secretaries of India (ICSI)** should support the Government, work together with the Government and surely we can do justice with our Mantra "**Together We Can Together We Will**".

IMPACT ANALYSIS ON THE PROFESSION OF COMPANY SECRETARIES

Analysis of any situation is always looking at both the positive and negative / brighter and darker aspect of the situation. Similarly, for our ICSI Fraternity today's situation will have both positive and negative impacts. But before an analysis, it is always mandatory to find the root cause /reasons/problems which will have an impact. Therefore, few of the possible root causes/problems which will have an impact on our profession are as follows:

- Firstly, a new concept of "**Work from Home**" has been introduced by most of the corporates and this has created panic/confusion amongst all of us.

- Secondly, lack of proper coordination, discussion with Seniors and other departments are creating problem in decision making and thus affecting timely compliances.
- Thirdly, social distancing is acting as a great hindrance / barrier in initiating Secretarial Audit/ Statutory Audit which is one of the most important work during the period April – May of a financial year.

Now, taking into consideration the problems if any analysis is made then there will be both positive & negative impacts.

POSITIVE IMPACTS

An American lawyer **Ramsey Clark** once said that **“Turbulence is life force. It is opportunity. Let's love turbulence and use it for change”**. So, during this crucial time we will all be used to the approach of “Work from Home” concept and in today’s age when technology has destroyed all the locational barriers, then “Work from Home” though challenging is definitely a change rather a positive change and it should be treated as an opportunity.

The Ministry of Corporate Affairs (MCA), and the Securities and Exchange Board of India (SEBI) has brought numerous circulars due to COVID-19 and all the circulars are meant to simplify the work process so that work is not affected. Few of such measures taken by MCA and SEBI are enumerated below:

➤ **Ministry of Corporate Affairs (MCA)**

Waiver of Additional Fee for filing during a moratorium period from 01st April to 30th September 2020, in respect of any document, return, statement etc., required to be filed in the MCA-21.

The mandatory interval of holding Board Meeting as per Section 173 of the Companies Act, 2013 has been extended by a period of 60 days till 30 September, 2020.

The Companies (Auditor's Report) Order, 2020 shall be made applicable from the financial year 2020-2021 instead of being applicable from the financial year 2019-2020.

Waiver of holding one meeting by the Independent Director as per Para VII (1) of Schedule IV to the CA-13.

Requirement under section 73(2)(c) of CA-13 to create the deposit repayment reserve of 20% of deposits maturing during the financial year 2020-21 before 30th April 2020 shall be allowed to be complied with till 30th June 2020.

Requirement under rule 18 of the Companies (Share Capital & Debentures) Rules, 2014 to invest or deposit at least 15% of amount of debentures maturing in specified methods of investments or deposits before 30th April 2020, may be complied with till 30th June 2020.

Newly incorporated companies are required to file a declaration for Commencement of Business within 180 days of incorporation under section 10A of the CA-13. An additional period of 180 more days is allowed for this compliance.

Non-compliance of minimum residency in India for a period of at least 182 days by at least one director of every company, under Section 149 of the CA-13 shall not be treated as a non-compliance for the financial year 2019-20.

Modifications has been brought in the LLP Settlement Scheme, 2020.

Clarifications has been published on passing of Ordinary & Special Resolutions by companies under the CA-13 and rules made there under on account of the threat posed by Covid-19.

Board Meetings may be held through videoconferencing or other audio visual means.

➤ **SEBI**

Sl No.	Regulations	Due Date	Revised Due Date
1	Regulation 7 (3) - Share Transfer Agent	30-Apr-20	31-May-20
2	Regulation 13 (3) - Statement of Grievance Redressal Mechanism	21-Apr-20	15-May-20
3	Regulation 24A read with circular No CIR/CFD/CMD1/27/2019 dated February 8, 2019 relating to Secretarial Compliance Report	30-May-20	30-Jun-20
4	Regulation 27(2) relating to Corporate Governance Report	15-Apr-20	15-May-20
5	Regulation 29 (2) - Prior intimation to stock exchanges about meetings of the Board	At least 5 days before the meeting if financial results are to be	2 days, for Board meetings held till July 31, 2020.

		considered 2 working days in other cases.	
6	Regulation 31 relating to Shareholding Pattern	21-Apr-20	15-May-20
7	Regulation 33 relating to Financial Results (Quarterly)	15-May-20	30-Jun-20
8	Regulation 33 relating to Financial Results (Annually)	30-May-20	30-Jun-20
9	Regulation 40(9) relating to Certificate from Practicing Company Secretary on timely issue of share certificates	30-Apr-20	31-May-20
10	Regulation 44(5) relating to holding of AGM by top 100 listed entities by market capitalization for FY 19-20	31-Aug-20	30-Sep-20
11	Disclosure filings under Regulations 30(1), 30(2) and 31(4) of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (SAST Regulations).	SEBI has extended the due date of filing disclosures, in terms of Regulations 30(1), 30(2) and 31(4) of the SAST Regulations for the financial year ending March 31,2020 to June 01, 2020.	
12	Regulation 74(5) of the SEBI (D & P) Regulations, 2018	21 days, over and above the lock down declared by Government of India.	
13	Regulation 76 of the Securities and Exchange Board of India (Depositories and Participants) Regulations, 2018 - Reconciliation of share capital audit report		

Thus, when the Government or Regulatory Bodies are allowing us with so many options/ extensions then as Company Secretaries it becomes our duty to grab this opportunity and assist the Board of Directors (BOD) of the Company and other stakeholders of the Company by abiding all the Compliances and performing all the compliances on time. In today's world e-mail, whats-app, video calls are available with most of the people around us and therefore distancing from others remains only physically but virtually all the communications are possible and work can easily be conducted.

The Regulators have also allowed to submit documents to the Stock Exchanges (S. E) with "Sd/-" mode or Digital Signature and many companies are also doing the compliance with the S. E in this crisis period. Just for an example, Tata Consultancy Services limited has

also declared its financial results for the year ended 31 March, 2020 on 16 April, 2020 and thus it is an example that when there is a will there is a way and no problem can act as a barrier.

Today's turbulent times can be treated as an opportunity to show the management that the Company Secretaries are really the backbone for any organization, a bridge between the BOD and other stakeholders, a governance professional who are adaptable to any environmental challenge.

NEGATIVE IMPACTS

Similarly, as there are two sides of a coin, every situation will have a negative impact and therefore COVID-19 will definitely have some negative impact on our profession. Fear of losing jobs, losing monetary benefits from the company is definitely one of the negative impact of the situation. The situation is also a threat for the students of the Institute. They will lack concentration, focus on the examination and definitely students are the future of the Institute and any negative impact on them will indirectly affect the CS Profession.

ROLE OF COMPANY SECRETARY IN REBUILDING ECONOMY

The Company Secretary is always responsible for the efficient administration of a company, particularly with regard to ensuring compliance with statutory and regulatory requirements and for ensuring that decisions of the BOD are implemented. In rebuilding Economy, corporates will always play a crucial role and Company Secretaries can guide the corporates so that there is proper implementation of the Corporate Social Responsibility. When the corporates perform their duties not only from the point of view of Section 135 of the Companies Act 2013 but with an motive of really helping the society then only the true essence of CSR can be achieved. Amid the COVID-19 outbreak, the Ministry of Corporate Affairs has notified that companies' expenditure to fight the pandemic will be considered valid under CSR activities. Therefore, Company Secretaries should take an active role in persuading the BOD to perform CSR activities to fight the pandemic.

However, in this changed scenario of working from home and using various technology for conducting Board Meeting or transferring data with different persons, the Company Secretary in consultation with the IT Teams of the organizations should take utmost care that data are not misused in any way. The Company Secretary should be careful that there

is no leakage of information or any Unpublished Price Sensitive Information are being leaked in the process of transferring data through Internet. Protection and prevention of misuse of data is again a crucial function of the Company Secretaries and we should abide by it.

CONCLUSION

Thus, summing up it can be rightly concluded that COVID-19 is a threat but we being the members of ICSI should work together with the Government, Regulators and definitely bring some positive impact in our Economy. The Institute can also form a forum or group with all the members of ICSI throughout India where we can discuss the problem of our locality and it may happen that we together may bring some solutions to the problem. The Members may even contribute any monetary amount so that the accumulated amount can be handed over to Central Government or State Governments and in turn the Institute as a token of appreciation can give a certificate which works as a catalyst in performing the action to fight the turbulent times.

References:

- 1) General Circular No. 11 /2020 by the Ministry of Corporate Affairs (Government of India) on Special Measures under Companies Act, 2013 (CA-2013) and Limited Liability Partnership Act, 2008 in view of COVID-19 outbreak.
- 2) Companies (Meetings of Board and its Powers) Amendment Rules, 2020 dated 19 March, 2020 issued by the Ministry of Corporate Affairs (Government of India).
- 3) SEBI circular No. SEBI/HO/CFD/CMD1/CIR/P/2020/3 dated March 19, 2020.
- 4) SEBI circular No. SEBI/HO/CFD/DCR1/CIR/P/2020/49 dated March 27, 2020.
- 5) SEBI circular No. SEBI/HO/MIRSD/RTAMB/CIR/P/2020/59 dated March 13, 2020.
- 6) UN Department of Economic and Social Affairs (DESA) official website: <https://www.un.org/development/desa/en/>

IMPACT ANALYSIS OF TURBULENT TIMES ON COMPANY SECRETARIES

CS Monica Suri

E-mail ID: msuri@amity.edu

INTRODUCTION

The World is hit. We all are passing through unprecedented times. The Impossible seems to have become possible. A pandemic caused by COVID-19 turned into a nightmare, which has transmitted from human to human and resulted in Global Lockdown. Every Nation, every State is experiencing its share of turbulence. There is Slowdown, which may lead to recession and may be finally a depression as was experienced in 1930's. In these uncertain times, everyone needs to come together to pool their knowledge and help businesses to survive.

The Profession of Company Secretaries is all pervading. Company Secretaries across the globe are increasingly being sought out and seen as trusted to help advise organizations. We are the Key Managerial Personnel and the nodal point around which the entire organization revolves. We are known for our Progressive Leadership and thus we can make a difference.

This article illustrates the impact and suggestive measures by our Institute to minimize the turbulence.

Impact Analysis and Alternatives

The current crisis has brought a halt. Industry, Commerce, Business, International trade and society at large are under captivity. "Stay Home, Stay Safe, Think and Innovate is the New Mantra to survive".

Given these circumstances, all the facets of work for Company Secretaries, in Practice or Employment have staggered and crippled.

Whether it relates to Board Meetings and Annual General Meetings, filing of returns, compliances, liaison with regulators; all are being managed through home space in virtual mode. New innovative ideas are being devised to manage the staff and manpower for work from Home. Arrangements for their salaries and same time minimizing the layoff is

another challenge. Survival of businesses and keeping the concern going will be assessed only with time.

Most of the professionals are working from home. The staff has shifted to online mode. Communication system in virtual mode is not adequately designed to meet the complete business solutions. Meeting all needs of filing and compliances with the regulatory bodies may not be completely possible in turbulent times.

However, “*Necessity is the mother of Invention*”, it’s the distress and difficult times that teach us to invent and innovate. In situations like current Global distress, which has impacted humanity, it’s important to motivate our staff and subordinates and encourage them to contribute novel ideas. The Profession of Company Secretaries is all versatile; we can formulate new solutions and workarounds, by slight changes in our work practices and expectations. It would be appropriate to state that it is *a World Reset situation*. Thus the multi skills with which we were endowed while we did our course, has to be now executed very pragmatically. We could also prioritize our work heads.

Managing *working Capital, cash flow*¹³ *becomes extremely challenging* in unprecedented times. The Practicing members are likely to feel the crunch more enormously. Payments in form of salaries and other expenses may mount while the revenue and income flow would be staggered.

Company Secretaries, are also Key Managerial Personnel and finance professionals. It is vital to adopt a big Plan of financial action, in such times. Prioritizing the expenses and reassessing the situation where clients could make the payments may be partially. Cost cutting and cost effective tools to innovate with existing resources can be adopted. Certain expenditure heads can be deferred. Loans and bank lending norms may be stiff but can be identified to keep the concern going.

It is turbulent times like these which makes the employer employee connect more strong. The human resource preserved now can rebuild the business again. *So despite the members may face a financial constraint but lay off should not be resorted.*

¹³ Members in Practice dealing with Covid 19 outbreak(March 18, 2020) retrieved from(<https://www.charteredaccountants.ie/News/members-in-practice-dealing-with-the-covid-19-outbreak>)

The fulcrum of CS practice lies in *advisory to Clients*. The trust and faith has to be rebuilt more at this stage of the uncertain time. The old clientele, who have been with the firms in testing times, would continue to show their solidarity as a goodwill gesture, while the others may reassess their situation and take stock of their own issues and challenges. The severity of the clients own business may become an extraordinary threat to survival of the client retaining relationship with the practicing member.

In fact these are the times where we as Company Secretaries can step into the shoes as *psychologist corporate counsellors*, through our expertise, skill and judgement and help them sail through this crisis. New ideas and modes of working, new methods and easy process solutions within the constraints may help them rebuild their business from a different perspectives. Such turbulent times may also lead to unexpected innovations to complete business solutions for the practicing sides and their clientele.

Biggest challenge for Company Secretaries is *maintaining the same standards in the unprecedented times*. Maintenance of Professional ethics and standards, for which the name of Company Secretaries upholds today. Despite the difficult times levels of transparency and timeliness of compliances remains a formidable task.

The challenges are more or less the same in case of Employment as well. Be it handling secretarial Audit, Board and AGM matters, compliances, disclosures, timeliness may be a challenge. Secretarial Audit would face practical difficulties in preparation of statements and carrying out of audits. The Companies will face problems in collating the data and records for submission as audit evidence¹⁴. The problems would aggravate since there is restricted travel, face to face meetings, the secretarial auditors will need to develop alternative audit procedures for analysis and compilation into final reports. The turbulence teaches checks and measures to safeguard. Accordingly, we may have to change our approach to alternative procedures. More reliance will have to be placed in use of technology in sharing the data, and conducting virtual meetings

¹⁴ Coronavirus Crisis, Implications on Reporting and Auditing (20 March2020)
(<https://www.accountancyeurope.eu/publications/coronavirus-crisis-implications-on-reporting-and-auditing/>)

Board Meetings, Annual General Meetings, compliances, committee meetings are other areas of concern. Notifications to this effect are already being issued for conducting Board Meeting through virtual mode. In the past few weeks, much has been issued in terms of advise from regulators regarding various corporate governance considerations related to the (COVID-19). It has carved a way out to very fast-moving present situation.

The *profession also encompass the students fraternity*. The Impact of such unprecedented times falls on conducting of the classes, conducting the exams, organizing events by the ICSI and conducting other skilled development programs. All this in turn will affect the fully groomed professionals being thrown out into the Industry. The process of MSOP may also slow down. The current Pandemic is at an alarming rate, causing impairment to all facets of the professional development.

However, our Institute is student centric as well. We have strived to achieve and provide best for student development. In uncertain times like these, alternative arrangements for conduction of the exams may be developed, since student safety is of paramount importance. We may at the same time thrive to deliver such norms which is equitable, stringent and upholds the integrity of the CS profession.

Suggestive Measures by our Institute

1. Conducting On line examination may be a measure. At the same time it is important to keep the students more engaged. Few On line Competition or Research Paper competitions may be planned. It could be in the form of a Student Youth Festival to keep them culturally engaged. Students are our biggest resource, we may invite their opinions as well in nation building.
2. We can also tie up with our Foreign Chapters abroad, in doing some ventures together. Exchange of On line resources may prove helpful for the profession and the economy.
3. Information system has to be strengthened. There are many members who may still not be aware of the Government measures in totality to recoup their businesses. A strong Information system to our fraternity may turn the table.

4. Ministry of Corporate affairs, and other regulators have been pronouncing several relaxation. However we may further submit academic notes/concept papers, just in case the situation escalates.
5. Separate Committee may be constituted, having member from different sectors and Industries. In fact even a committee at the student level should be constituted. Its during the turbulent times we need to touch the grass root levels to evolve further.

Conclusion

World today, is facing most unexpected and unprecedented times. COVID-19 has been declared as a pandemic impacting all nations in the globe. The Profession of Company Secretaries has also been crippled. From incorporation of Companies, to Secretarial audits, to filing, compliances and conducting of the Board Meetings etc, is being carried with alternative modes. Virtual meetings, Video Conferencing are being widely used. The regulators have also provided relaxations in matters of filing, extension of the deadlines. Flexibility may also be required in the Company Secretaries examination, in case the situation escalates. On line mode of examination may be a probable solution. This may though have a vicious cycle of delay in the fully trained CS being ready for the industry. But we live in a world where we HOPE AGAINST HOPE and to conclude it on a spiritual note there is a power above all of us, lets continue to Pray together for a better world full of peace, Bliss and Happiness. May the Profession of Company Secretaries touch the Sky, Day in and Day out !!

References

Coronavirus Crisis, Implications on Reporting and Auditing (20 March 2020)

(<https://www.accountancyeurope.eu/publications/coronavirus-crisis-implications-on-reporting-and-auditing/>)

Members in Practice dealing with Covid 19 outbreak (March 18, 2020) retrieved

from (<https://www.charteredaccountants.ie/News/members-in-practice-dealing-with-the-covid-19-outbreak>

<https://www.tagetik.com/en/blog/authors/jared-begun/2020-04-5-essential-must-haves-for-todays-turbulent-times#.XsVoF1>

<https://www.orfonline.org/expert-speak/covid19-likely-economic-impact-63773>

<https://economictimes.indiatimes.com/news/economy/indicators>

IMPACT ANALYSIS OF TURBULENT TIMES ON COMPANY SECRETARIES

CS Nandita Dhar

e-mail: csnandita@gmail.com

“The ultimate measure of a man is not where he stands in moments of comfort and convenience but where he stands in times of challenge and controversy.”—Martin Luther King Jr.

INTRODUCTION

Indian economy is a developing market economy. According to International Monetary Fund (IMF), since the start of the 21st century, annual average GDP growth has been 6% to 7%, and according to report of world economic outlook of October edition 2018, from FY2014 to FY2018, India, emerged as the world’s fastest growing major economy, surpassing China. As per OECD Publishing, India had the largest economy in the world for most of the two millennia from 1st until 19th century. According to IMF’s October world economic outlook, India ranked 5th in GDP (nominal) and 3rd in GDP (Purchasing Power Parity). GDP growth indicated a hike of 4.7% in Q3 in FY 2019-20.

As we all are aware, that today the world is facing humanities biggest pandemic i.e. COVID-19, which is an infectious disease. The virus that causes COVID-19 is mainly transmitted through droplets generated when an infected person coughs, sneezes, or exhales. These droplets are too heavy to hang in the air, and quickly fall on floors or surfaces. You can be infected by breathing in the virus if you are within close proximity of someone who has COVID-19, or by touching a contaminated surface and then your eyes, nose or mouth.

In the last few months, epicenter of the virus has shifted from China to Europe to the United States and now in India. Till date, over 1.5 million people have been infected by COVID-19 and about 1lac people have died worldwide.

On 24 March 2020, India announced a complete shutdown of its \$2.9 trillion economy by closing its businesses and issuing strict lockdown orders to more than 135 crore Indians. Transport systems were suspended in a day. Educational Institutions and Offices were shut down. Government by imposing Lockdown is combating the disease on one side and

keeping the society safe on the other side. By keeping the economy at halt, India is currently gambling on lockdown to save millions of people. **IMPACT ON SOCIETY**

(“Strength of Nation derives from the integrity of the home.”-Confucius)

- **AGRICULTURE:** Continuing restrictions on movement of people and transport has created negative impact on farm economy. Also, restrictions on migration of workers to their native places has created chaos. The Union Home Ministry, in a very significant move, has notified to exclude movement of farmers, farm labourers and harvesting and sowing-related machines from the purview of lockdown.
- **FICCI survey** showed 53% of Indian businesses have indicated a significant impact of COVID-19 on business operations. And 42% of the respondents said that it may take up to three months for normalcy to return.
- **CHEMICAL INDUSTRY:** It was found that 20% of the production has been impacted due to the disruption in raw material supply. Business in India is likely to get affected so people are anxiously securing their supplies.
- **SHIPPING INDUSTRY:** COVID-19 outbreak has impacted the business of cargo movement service providers. According to the sources, the movement per day per vessel has declined by more than 75-80% in dry bulk trade.
- **AUTO INDUSTRY:** At present current levels of the inventory seem to be sufficient for the Indian industry.
- **PHARMACEUTICAL INDUSTRY:** Despite being one of the top formulations of drug exporters in the world, the Pharma industry of India relies heavily on import of bulk drugs. Due to the COVID-19 outbreak, it is expected that supply of bulk drugs from other nations to India may be adversely impacted in the turbulent times.
- **TEXTILE INDUSTRY:** In the present crisis, several garment/textile factories in China have halted their operations that in turn affecting the exports of fabric, yarn and other raw materials from India.
- **ELECTRONICS INDUSTRY:** India’s electronic industry may face supply disruptions. Decline in production due to heavy dependence on electronics component supply directly or indirectly and local manufacturing, will lead to fall in product prices.
- **TOURISM INDUSTRY:** Due to pandemic effect, tourism industry has suffered a great loss as many flights and journeys got cancelled.

According to the World Bank's assessment, India's GDP is expected to grow between 1.5 per cent to 2.8 per cent. IMF projected a GDP growth of 1.9 per cent for India in 2020 because the global economy is affected by the COVID-19 pandemic, the worst recession since the Great Depression in the 1930s. Also, it is fact that this nationwide lockdown has hit the growth of several sectors including MSME, hospitality, civil aviation, agriculture and allied sectors etc.

Due to weak domestic consumption and consumer preferences, there can be a delay in investment which further adds pressure on the growth parameters. It is clearly indicated that post-COVID-19, some economies are expected to adopt de-risking strategies and shift their manufacturing bases from China. This can create opportunities for India.

ROLE OF COMPANY SECRETARY IN REBUILDING ECONOMY

All Birds find shelter during rain but eagle avoids rain by flying above the clouds

The Company Secretary is responsible for the efficient administration of a company, particularly with regard to ensuring compliance with statutory and regulatory requirements and developing a good Corporate Governance system for timely implementing the decisions of the Board of Directors. A Company Secretary is a spokesperson for the organisation and should possess requisite leadership competencies to guide the board of directors and other senior officials for operating within the law. During this Crisis CS should exhibit alertness and proactively guide their companies towards adopting the changes in compliance procedures introduced by MCA as given below:

- **Relaxations in Compliance Requirements:** CS performs an advisory role by interpreting the role and powers of Chairman and Director of the company. During the time of pandemic, MCA has already issued various circulars regarding relaxation of various forms etc. It is the duty of CS to create awareness amongst the directors of the company with respect to these initiatives taken by MCA and various authorities.
- **Scheduling Company Meetings:** The Board of Directors/Audit Committee of the Company are given relaxation from observing the maximum gap between two meetings held or proposed to be held between the period December 1, 2019 to June 30, 2020. However, the Board of Directors/ Audit Committee of the Company shall ensure that they meet at least four times in a year. For the period from March 19,

2020 to June 30, 2020, the meetings may be held through video conferencing or other audio visual means, for the matter(s) previously restricted, such as the approval of financial statements and Board's report. Hence, the CS has to proactively take initiatives to execute these changes in the compliance procedures. .

- **Command over Corporate Governance:** The Government of India has notified COVID-19 as disaster, accordingly spending of CSR funds for COVID-19 is an eligible CSR activity. Company Secretary can guide the management of the Company to invest in CSR activities accordingly.

MEASURES ICSI CAN TAKE FOR BETTERMENT OF THE PROFESSION

“In the midst of Chaos, there is also opportunity”- Sun Tsu

Great Initiatives have been already taken by ICSI for the upliftment of students and members. Institute has started providing online classes for students. Also, institute is conducting webinars for members for updating their knowledge during this lockdown period.

The Delhi government has proposed to offer various welfare schemes for advocates like financial assistance, Life insurance cover of 10 lacs, Group insurance of Rs. 5 lacs, e-library facility etc.,. On similar lines representations can be forwarded to the MCA for setting up of Company Secretary Welfare Fund for welfare of associate and registered members at the time of national emergency.

IMPACT ANALYSIS OF TURBULENT TIMES ON COMPANY SECRETARIES

CS Lalit Rajput

E-mail ID: lalitrajput537@gmail.com

- **Coronavirus Disease 2019 (COVID-19)**

COVID-19 is a Pandemic disease as declared by World Health Organization (WHO). The Govt. of India has taken various preventive measures including Lockdown in the Country, to tackle this COVID-19 outbreak.

Various Ministries and Regulatory Authorities in India have provided relaxations to the Corporates and Taxpayers including Individuals in Compliance norms by giving relaxations and extended the due dates due to COVID-19 Outbreak.

COVID-19, disrupted financial markets and global economy both and emerged as the biggest threat to human life. To give relief Professionals from stress related to due dates of various Corporate Compliances and boost economy together, Government of India relaxed Compliance norms and injected funds to the economy.

- **List of Relaxations and Company Secretaries**

Let's have a look of Various relaxations issued by Several Government Authorities under which Company Secretaries have to perform their duties to maintain high standard of Corporate Governance by abiding laws and regulations in timely complied manner:

1. National Company Law Appellate Tribunal (NCLAT):

- a) Withdrawn of Urgent Matters listed with NCLAT on 25th March and 01st April, 2020.
- b) Extension of Limitation period for Filing of Appeals from 15th March, 2020 till further order/s.

2. Updates on Insolvency Law: Period of lockdown be excluded for the purpose of counting of the period for 'Resolution Process under Section 12 of the Insolvency and Bankruptcy Code, 2016.

3. Initiatives taken by Ministry of Corporate Affairs (MCA)

- a) No additional fees shall be charged for late filing during a moratorium period from 01stApril, 2020 to 30th September, 2020, in respect of any document, return, statement etc.
- b) Relaxation in Provisions related to Board Meetings and Shareholders Meetings.
- c) The Companies (Auditor's Report) Order, 2020 shall be made applicable from financial year 2020-21.

d) Launching of Corporate Revival Schemes: “Companies Fresh Start Scheme, 2020” and “revised LLP Settlement Scheme, 2020”.

e) Filing of Form DIR-3KYC/DIR-3KYC-Web/ACTIVE without any filing fee.

4. Initiatives by Ministry of Finance:

a) Amendment in the Indian Stamp (Collection of Stamp-Duty through Stock Exchanges, Clearing Corporations and Depositories) Rules, 2019 and many more.

5. Initiatives by Reserve Bank of India:

a) Reduction in Repo Rate

b) A moratorium of three months of EMIs on all outstanding loans was announced.

c) Deferment of Implementation of Net Stable Funding Ratio (NSFR)

6. Initiatives by Securities and Exchange Board of India

a) SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011

b) SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (LODR)

c) SEBI (Mutual Funds) Regulations, 1996

d) Real Estate Investment Trust (REITs) and Infrastructure Investment Trusts (InvITs)

e) SEBI (Credit Rating Agencies) Regulations, 1999

f) SEBI (Depositories & Participants) Regulations, 2018

g) SEBI (Depositories and Participants) Regulations, 2018

7. Initiatives by Central Board of Direct Taxes

a) Extension of last date for linking of Aadhaar-PAN till 30. 06. 2020

b) Extension of Vivad se Vishwas scheme without 10% additional charge till June 30, 2020

c) Extension of various due dates expiring between 20th March 2020 to 29th June 2020

The due dates for issue of notice, intimation, notification, approval order, sanction order, filing of appeal, furnishing of return, statements, applications, reports, any other documents.

d) Reduction in levying Interest rate (9%) for depositing tax and waiver of late fee / Penalty between 20th March 2020 and 30th June 2020

8. Goods and Services Tax

a) Extension in filing GSTR – 3B which is due in March, April and May 2020 can be filed by the last week of June, 2020 (*Taxpayer having Aggregate annual turnover less than Rs. 5 Crore*).

b) Decrease in Interest Rate for Filing Delayed GSTR – 3B filing for Taxpayer having Aggregate annual turnover more than Rs. 5 Crore.

c) Extension of Composition Scheme till the last week of June, 2020.

d) Extension in filing of GST Annual Returns of FY 18-19, which is due on 31st March, 2020 is extended till the last week of June 2020.

f) Extension of Sabka Vishwas Scheme till 30th June, 2020.

9. Ministry of Labour & Employment, Government of India has EPF Due Date:

Extension of due date for payment of contributions and administrative charges/Inspection charges due for wage month march 2020 from 15. 04. 2020 to 15. 05. 2020 to establishments disbursing wages for March 2020.

ESIC Due Date: The ESI contribution for the month of February, 2020 & March 2020 can be filed & paid up to 15th May 2020 instead of 15th March, 2020 & 15th April, 2020 respectively.

• Define Company Secretary:

A **COMPANY SECRETARY** means “a person who is a member of the Institute of Company Secretaries of India (ICSI)” - *Company Secretaries Act, 1980*

"**COMPANY SECRETARY**" means a company secretary as defined in clause (c) of sub-section (1) of section 2 of the Company Secretaries Act, 1980 (56 of 1980) who is appointed by a company to perform the functions of a company secretary under **Section 2 (24) of Companies Act, 2013**

"**COMPANY SECRETARY IN PRACTICE**" means a company secretary who is deemed to be in practice under sub-section (2) of section 2 of the Company Secretaries Act, 1980 (56 of 1980) and **Section 2 (25) of Companies Act, 2013**

• Company Secretaries have to play Dual Role

After getting degree of CS and enroll with ICSI as a valid member post all trainings, Company Secretaries having two choices –

a) To do Job as Company Secretary in Corporates- **Company Secretary(CS)**

b) To Start own work post getting valid Certificate of Practice from ICSI. - **Practicing Company Secretary (CS)**

• Motto of ICSI is motto of every Company Secretary:

“Satyam Vada, Dharmam Chara” - Means “Speak the Truth, Abide by the Law”

The ICSI has always been striving to uphold the torch of Corporate Governance Profession high in its pursuit of Professional Excellence.

• Role of Company Secretaries – Kingpin of Corporate Governance

Company Secretaries, Members of ICSI, are **Kingpin of Corporate Governance**. Under section 203 of the Companies Act, 2013, Company Secretary has been defined as KMP's

i.e. Key Managerial Personnel, means person who is **in-charge** of maintaining the high standard of Corporate Governance by abiding laws and regulations in timely complied manner. In other countries, Company Secretary is called as Corporate Secretary as he is responsible to take care of all the compliances with statutory and regulatory requirements.

Due to this COVID-19, pandemic situation in the country, various ministries and Government Authorities has given relaxations in various Corporate Compliances which includes:

- Income Tax Compliances
- GST Compliances
- SEBI Compliances
- MCA / Registrar of Companies Filings
- Customs Acts etc.
- Central and Excise duties Payments etc.

Apart from Complying with all the Compliances in a time bound manner prescribed by various authorities, Company Secretaries also required to support the government initiative of amending FDI Policy for curbing opportunistic takeovers/acquisitions of Indian companies due to the current COVID-19 pandemic.

Company Secretary is also defined as “Compliance Officer” under the SEBI Laws and Regulations. Therefore “Company Secretary” is responsible for all SEBI related matters which includes, Quarterly, Half Yearly, Annually and Event based Compliances under the SEBI Act and other related Stock Market Laws, applicable to the Company.

- **Time bound Compliances and Corporate Governance:**

As stated above, various due dates have been extended now Company Secretaries whether in Job or in Practice, both require to perform their duties to Company with new dates. Due to lockdown and limited source of Data/information availability, it is not possible to Complete the tasks at a rapid pace at present. Corporate Governance is a mechanism by which corporates are controlled and operated in complied manner. Corporates are responsible and accountable to stakeholders.

Post Lockdown there are number of Compliance norms and day to day work require to be done by Company Secretaries which includes:

- a) Filing of Pending/ event based forms with MCA Authority
- b) Filing of various returns with GST and Income Tax Authorities.
- c) SEBI – Quarterly / Half Yearly / Annually/ Event Based Compliances
- d) Liasoning with various authorities
- e) Labour Law Compliances
- f) Preparation of Annual Reports
- g) Arrangements for Annual General Meetings
- h) Preparation of Compliance Reports / Disclosures
- i) Preparation of forms and returns under Corporate Revival Schemes for Companies and LLP's by Practitioners
- j) Certifications of various forms physically / digitally

- **Compliance with changing FDI measures**

Company Secretaries are called Corporate Compliance Expert. At present India is a hub for investment by many foreign countries. Company Secretaries have to get equipped with more expertise in this area and advice Industry Experts. This will help country to **generate Foreign Investments and will boost economy** too.

Compliance Check in FDI

Few days back, Government amended **FDI Policy for curbing opportunistic takeovers** and to bar automatic investments by neighboring countries in Indian Companies. Company Secretaries should follow the government guidelines and do proper check in case of Foreign Investment came and prepare and file proper disclosures with the relevant authorities from time to time

Conclusion:

Company Secretaries have to play a vital and important role to boost economy and protect Indian companies from opportunistic takeovers. We have to assure corporates and stakeholders that all we will do proper due diligence and also will take pragmatic steps to keep the company fully compliant, as and when required.

Company Secretary have to comply with all the Compliances in a time bound manner prescribed by various authorities and to support the government initiative of amending FDI Policy for curbing opportunistic takeovers/acquisitions of Indian companies due to the current COVID-19 pandemic.

At the end I would like to quote that “Together we can, Together we will”

We have to follow and abide the regulations and advisories issued by Ministry of Health and other Ministries from time to time and also made contribution towards joining the movement to fight against the spread of the disease.

!!Stay Home, Stay Safe!!

References

- 1. Press Information Bureau (PIB)*
- 2. Ministry of Corporate Affairs (MCA)*
- 3. Company Secretaries Act, 1980*
- 4. Newspapers clippings (Economic Times, Business Standard)*

IMPACT ANALYSIS OF TURBULENT TIMES ON COMPANY SECRETARIES

CS Deepti Grover Khanna

E-mail ID: dgkassociates01@gmail.com

INTRODUCTION

COVID-19 which was first identified in Wuhan, China, in December 2019, was declared to be a Public Health Emergency of International Concern on 30 January 2020, and

April 2020, more than 1.92 million cases of COVID-19 have been reported in 210 countries and territories, resulting in more than 119,000 deaths. More than 453,000 people have recovered, although there may be a possibility of relapse or re-infection. The case fatality rate was estimated to be 4 per cent in China, but varies significantly between countries.

This Outbreak has lead to **turbulent times**, not only in India but in all over the world. The pandemic has led to severe global socioeconomic disruption, the postponement or cancellation of sporting, religious, political and cultural events, and widespread shortages of supplies exacerbated by panic buying. Schools, universities and colleges have closed either on a nationwide or local basis in 197 countries, affecting approximately 99.9 per cent of the world's student population. Misinformation about the virus has spread online, and there have been incidents of xenophobia and discrimination against Chinese people and against those perceived as being Chinese or as being from areas with high infection rates. Due to reduced travel and closures of heavy industry, there has been a decrease in air pollution and carbon emissions.

On 24 March, our Honb'le Prime Minister, Shri Narendra Modi declared

India as a preventive measure to control the spread of coronavirus (COVID-19) pandemic. It was ordered after a 14-hour voluntary public curfew on 22nd March, followed by enforcement of a series of regulations in the country's COVID-19 affected regions. The (COVID-19) cases in India was approximately 500.

On 7 April, reports said that the state governments and other advisory committees recommended extending the lockdown. On 9 April and 10 April, the State Governments of

Odisha and Punjab extended the lockdown in their states to 1st May. Maharashtra, Karnataka, West Bengal and Telangana followed suit. On 14 April, our Hon'ble Prime Minister further extended the ongoing lockdown till 3 May, with some conditional relaxation after 20 April for the regions where the spread have been prevented.

EXPANDING ROLE AND RESPONSIBILITIES OF COMPANY SECRETARIES

This Turbulent Time in form of COVID-19 is an extreme and undesirable situation which can only be resolved by resorting to equally extreme and radical action. **Company Secretary** plays an important role in the implementing compliances of company law and other laws and in smooth functioning of the administration process of the Company. As it is the top qualification in the country, the responsibility and role are very complicated and need channelized attempt to be displayed in a phased manner. Company Secretary occupies a significant position in organisations under the Companies Act, 2013. Companies have the responsibility to face up to the reality of environmental issues, and infectious disease “Novel Coronavirus COVID-19”, a pandemic is one of the most and recent example of turbulent times.

Corporate Social Responsibility (CSR) is becoming an increasingly important *aspect of boardroom discussion. CSR as defined by the European Commission as “A concept whereby companies integrate social and environmental concerns in their business operation and in their interaction with their stakeholders on a voluntary basis”*

An Effective CSR Program is implemented and supported by corporate levels, oversight mechanism, training programmes and accountability measures. A Company Secretary being a vital employee holds office based on the concept of trust, reflecting the confidentiality of the role. At the same time, the Company Secretary is the direct nexus to the board of directors and therefore it is suited to playing a significant role in CSR formulation and implementation.

ICSI guidelines states that *The Company Secretary shall share responsibility with relevant specialist functions for ensuring that the board is aware of current guidelines in this area and it takes account of the significance of corporate responsibility issues in its stewardship and oversight of the company*

Keeping in view of the outbreak of COVID-19 in India, and its declaration as the pandemic by the World Health Organisation and decision of Government of India to treat it as a notified disaster, it is hereby clarified that spending of CSR Funds for COVID-19 is eligible CSR activity.

The Ministry of Corporate Affairs highlighted in one of its circular: -

Making decision is where all that learning you have been doing coupled with the Company Secretaries deep awareness of the internal working of the organisation and an equally deep awareness of the factors in the outside world that have an impact on the organisation shall come into play helping to understand and analyse what needs to be done. Good strategy develops a few principal indicators that help them to make sense of the situation, indicators based on the most important things to the organisation such as customer satisfaction, product development and employee morale.

IMPACT OF LOCKDOWN ON LEGAL NORMS AFFECTING COMPANY SECRETARY PROFESSION

A) In view of the aforesaid lockdown, Ministry Of Corporate Affairs has initiated the Companies **Fresh Start Scheme, 2020** to provide relief to law abiding companies and in the wake of COVID-19. The Crux of the Companies Fresh Start Scheme, 2020 introduced by MCA with **General Circular No. 12/2020 dated 30/03/2020** is as follows:

S. No	Purpose	
1.	Period for which Scheme is Open	01/04/2020 to 30/09/2020
2.	Applicability	A defaulting company# for filing belated documents due for filing on any given date # A defaulting company means a company which has default in filing any documents, statements, returns etc.including annual statutory documents on MCA 21 registry
3.	Benefits:	1. Pay only Normal fees, no additional fee payable. 2. Immunity from launch of prosecution*. 3. Proceedings for imposing penalty. * only pertaining to delay associated with filing of belated documents.
4.	Companies for which this scheme is not applicable:	A. Companies against which final notice for Striking off the name initiated. B. Companies which have voluntarily filed application for Striking off the name. C. Companies which have been amalgamated.

		D. Companies applied for Dormant Status. E. Vanishing Companies.
5.	Forms for which this scheme is not applicable	An Increase in authorised capital involved (Form SH-7). B. B Charge related documents (CHG-1, CHG-4, CHG-8 and CHG-9).
6.	Cases were Immunity of this scheme not applicable	Any matters pending before court of law. B. In case of management disputes of company pending before any court of law or tribunal. C. Court has ordered conviction in any matters and no appeal preferred before this scheme. D. Any order imposing penalty has been imposed and no appeal preferred before this scheme.
7.	Special Provision for Cases where Penalty order was passed and appeal could not be filed as last date of filing appeal falls between 1 March, 2020 to 31 May 2020	A period of additional 120 days allowed from the last date of filing appeal B. During additional period, no prosecution* of noncompliance of the orders shall not be initiated * only pertaining to delay associated with filing of belated documents

B) As we all are aware that Prime Minister of India has constituted the **Prime Minister’s Citizen Assistance and relief in Emergency Situations Fund (PM Cares Fund)** with the primary objective of dealing with an emergency situation such as the one posed by COVID-19 pandemic and to provide relief to be affected. Ministry of Corporate Affairs vide office Memorandum No.CSR-05/1/2020-CSR-MCA dated 28th March 2020 has clarified that any contribution made by companies to the PM Cares Fund qualifies as admissible expenditure towards fulfilling their CSR obligation under the Companies Act, 2013. Any contribution made to PM Cares Fund before 31st March 2020, also qualify for 80 G exemption as applicable under Income Tax Act, 1961.

C) Ministry of Corporate Affairs had issued a **General Circular No. 17/2020 Dated 13th April, 2020 in respect of clarification on passing of ordinary and special resolutions**

by companies under Companies Act, 2013 and rules made there under on account of the threat posed by COVID-19. The rules are as follows: -

- i. In accordance with the provisions of Rules 18 of the Companies (Management And Administration) Rules, 2014 the notice to members may be given only through e-mails registered with the company or with the depository participant/ depository.
- ii. A copy of the notice shall also be displayed on the website of the company, if any.
- iii. A relevant companies were allowed to pass resolutions through postal ballot/e-voting without holding a general meeting unless it is so required through show of hands, in such cases voting during the meeting held through video conferencing or OAVM.
- iv. Passing of certain items only through postal ballot without convening a general meeting. The communication of the assent or dissent of the members would only take place through the remote e-voting system, as no meeting will be required to be called.
- v. The poll will take place during the meeting and the members may convey their assent or dissent only at such stage on items considered in the meeting by sending e-mails to the designated e-mail address of the company, which was circulated by the company in the notice sent to the members.

D) Ministry of Corporate Affairs has already allowed filing in MCA-21 registry without additional fees till 30th September, 2020 through **General Circular No. 11/2020 dated 24th March, 2020 and General Circular No. 12/2020 dated 30th March, 2020**. The necessary relaxations in so far as filing of various other IEPF e-forms such as IEPF-1, IEPF-2, IEPF- 3, IEPF-7 and e-verification of claims filed in IEPF- 5 is concerned, the same has already been provided.

DIN holders of DINs marked as ‘Deactivated’ due to non-filing of DIR-3KYC/DIR-3 KYC-Web and those Companies whose compliance status has been marked as “ACTIVE non-compliant” due to non-filing of Active Company Tagging Identities and Verification(ACTIVE) e-form are encouraged to become compliant once again in pursuance of the **General Circular No. 11 dated 24th March, 2020 & General Circular No. 12 dated 30th March 2020 and file DIR-3KYC/DIR-3KYC-Web/ACTIVE** as the case may be between 1st April, 2020 to 30th September, 2020 without any filing fee of INR 5000/INR 10000 respectively.

F) In exercise of the powers conferred by the proviso to **section 4 of the Insolvency and Bankruptcy Code, 2016**, the Central Government hereby specifies **one crore rupees as the minimum amount of default** for the purposes of aforesaid section.

G) Modification of LLP Settlement Scheme- 2020

The scheme shall come into force with effect from 1st April, 2020 and shall remain in force upto 30th September, 2020: -

Definitions: -

- i) Act means the Limited Liability Partnership Act, 2008.
- ii) LLP means a LLP as defined in section 2(n) of the Limited Liability Partnership Act, 2008.
- iii) Defaulting LLP means a LLP registered under Limited Liability Partnership Act, 2008 which has made a default in filing of documents on the due date(s) specified under the LLP Act, 2008 and rules made thereunder.
- (iv) Belated Documents means all documents or forms which are required to be filed in the MCA 21 registry under the provisions of LLP Act, 2008 and the rules made thereunder.

Applicability: -

Any defaulting LLP is permitted to file belated documents which were due for filing till 31st August, 2020 in accordance with the provision of this scheme.

Manner of payment of fee on filing of belated documents for seeking immunity under the scheme: -

The defaulting LLP may themselves avail this scheme for filing documents which have not been filed or registered in time on the payment of fee as payable for filing of such document or return. No additional fees shall be payable for filing any belated documents under this scheme.

Immunity from prosecution in respect of documents filed under the scheme: -

The defaulting LLPs which have filed their belated documents till 30th September, 2020 and made good the default shall not be subjected to prosecution by the Registrar for such defaults.

ACHIEVING ECONOMIC STABILITY: THE ROLE OF CS PROFESSIONAL WOULD YOU BE INDIA'S BEST WARRIOR?

CS Sudhir Thite

E-mail ID: sudhirthite@yahoo.com

We are indeed living in challenging and not so interesting times these days. COVID-19 an invisible enemy is bringing personal/community/social/economical challenges to fore. This generation has never witnessed epidemic of this kind except in stories and movies. However, it is equally interesting to note, in a warrior spirit- given the challenges how fast people can adopt to the changing times and keep the things going. Isn't this unique spirit that we all admire in India Inc?. This Article dwells into understanding the challenges ahead and suggests possible measures to tackle epidemic of this size. In future India will need to be better prepared on war footing on certain basic infrastructure for this country.

While lot has been written and talked about COVID-19, it leaves us thinking of how we can get out of this quagmire. Going by data of other countries, early lockdown was best thing to do at earlier stage than controlling the exploded situation that would have put acute pressure on medical system which at present is not capable to address the onslaught of this epidemic. This is by far great achievement so far. However, realities stare in our face of how do we kick start the economy engine which has been put on standby for last 3 weeks. Are we ready to take on economic challenge post the COVID-19 situation in India? Let's put some analysis on the way ahead of us on this.

For any challenges of this magnitude the priority for the nation always will be:

- Safety and Health of Individuals and foremost of the frontline warriors
- Sustenance of the citizens of the country- Food security
- Managing the Law and Order situation
- Management of Essential services
- Managing the economic impact through various fiscal measures
- Containment measures to avoid repetition of pandemic

These priorities will need to be known to Citizens of India for contingency planning ahead. Before even we discuss lockdown, major mindset change is needed for people in India to fight epidemic of this magnitude.

- Awareness: Awareness of casualties inflicted for ignorance of this issue is the single most important thing in fight against COVID-19. No matter what phase of

situation we are in our fight against COVID-19, if people act ignorant, possibility of its recurrence can be very high.

- **Hygiene:** Having created the awareness, next focus undoubtedly is hygiene of the people where people in India can be seen ignorant of its importance.

If these things are managed well by citizens and administration, we are ready to venture on breaking this quagmire.

1. **Lockdown:** To begin with Lockdown is best way to stop spreading the epidemic. In short term it would make wonders in controlling the epidemic but inflicts immense financial challenges on people with daily subsistence whose survival is dependent on cash flowing to them for its daily wherewithal. During this lockdown phase, the supply chain has to run in a streamlined/efficient manner. If the awareness and hygiene is managed well, the logistics operators can take care of the essential supplies to various places. For Logistics there would be dependency on several other areas such as restaurants, petrol pumps across the highways etc. All these people will be the frontline warriors in facilitating the lockdown.

- ***Addressing the survival of unorganized sector***

The biggest problem that needs to be managed at this stage is how to address survival of the people in unorganized sector? There has to be better systems to track people in India given the impact and scale of the lockdown. Time and again it is important for country like us to make Pan and Aadhar linked to Bank accounts mandatory. We also need to make PAN mandatory for all payments in unorganized sector. This will make tracking of income for all the marginal income people easy. In- challenging times, this data can be used for classifying the people according to the income class and will facilitate direct benefit transfer to alleviate the pain associated with lockdown. If India can start using Aadhar more effectively health care benefits can be better organized for the marginal income people in India. As India Progresses to next levels, ensuring the social security of marginal people can be treated as one of the highest priorities to be called “progressive nation”.

- ***Addressing the survival of small and medium scale enterprises***

Each one of us has reasonable understanding of the business and understand that cash flow is the single most important part of any business for its survival. In the challenges of lockdown, if the small-scale vendor’s problems are not addressed, the situation will worsen for economy and economy may run into recession mode. While

it may be practically unfeasible for small business to manage its fixed expenses amidst all this, Innovative ways such as providing enhanced loans to SME's at minimal to no cost shall be considered as priority. RBI has done a great job in ensuring that significant funds are made available with banks to manage credit, however ensuring its execution to SME's will need to be addressed. Banks may play a pivotal role in addressing these situations. Government subsidies can play a pivotal role in this.

2. **Transition from lockdown to normalcy:** Easier said than done, when people fear for lives, it is very rare possibility that they would return for resuming the normal activities unless threat is reduced to large extent. The reason this article names each individual as warriors is barring senior citizen or people with pre-ailments, kids, each one of us need to cautiously and consciously resume normal activities over some time from now. Awareness and Hygiene hence are the foremost factors to begin with. Like a soldier treading in the battle land with mines waiting to explode, it still needs to progress with the calculated risk weighing on his mind and achieve the desired goals of gradual progressing. In all such scenarios cash registers will ring from Primary to Secondary Industry. With certain caution, manufacturing be allowed for organizations who display ownership of the safety and hygiene of the people it deploys and placing ownership of safe environment with organization. Organization in such conditions need to be overly cautious. Once the cash registers start moving, there may be reasonable intervention of early payments from bigger organization to smaller organization be initiated. There can be law to deal with it, however laws do not solve problem, this has to be better taken as responsibility to facilitate the economy than regulation. No matter not fitting into overall perspective, CSR Budgets may be spent by Organization for following social distancing norms. This all will gradually start pulling service industry in the mainstream. There may be hiccups on the way that areas may be classified as Orange and Red zone prohibiting the entry and exit of private vehicles, however if the environment in premises is created far safer within the organization than without, there would be higher number of employees tempted to return to organization as safety precautions are far higher. In the meantime, all employees in service sector which can continue to work from home shall continue to do so till situation drastically improve. Cash flows thus started will continue to move economy gradually.

3. **Normalcy:** Post normalcy unorganized industries which are retail focussed may continue to struggle as building confidence with the consumers may take long time. Small industries & start-ups which are frugally managed may see a collapse. The unorganized labor may be reluctant to start their activity as normal. It would take long time to come back to normalcy. Industry may witness taking a back step as lot of disruptive innovation may get lost. How they can be helped will pose a biggest challenge. If we want these industries to survive, subsidies by banks compensated by government may be a necessity. This may seem unprecedented however calamity of this scale will need unique and innovative solutions. Industry if supported will bring the economy back into action again.

Big corporates especially the ones who can responsible for its bigger CSR spends can manage the food security of the people well as over a period of years they have better administration mechanism developed by such companies and go a long way in supporting government efforts to manage calamities in future.

India is still in the mid of this catastrophe and yet to comprehend the complete financial impact of this catastrophe. As the time progresses, we may witness the slew of measures from Government. Time would tell what worked and what did not, in the meantime we all would say to everyone around we have witnessed the time Before Corona (BC) and After Corona (AC). Stay Safe Stay Healthy!!!

IMPACT ANALYSIS OF TURBULENT TIMES ON COMPANY SECRETARIES

CS Saurabh Chaubey

E-mail ID: sauravchaubey1990@gmail.com

The world is witnessing a very tough time which it has never seen before. The whole system of Governance, Management, Economy, and Society has been taken for a toss. Every single day we see and hear about deaths, diseases, unfortunate plights of people, their sufferings, hunger and lot more. The whole idea of human existence has been haunting us day and night. We are not safe in our own Country. To add more to our dismay we aren't safe enough in our home as well. The outbreak of COVID-19 has put humans under "Endangered species" category. Now, do we really think we are above Nature? Do we really think we can conquer everything with the Power of money? Do we really think we are invincible? The answer to this is a big "NO". We may have excelled in space science, we have reached Moon and Mars, we have been exploring Universe with our latest and vibrant technology, but the Mother Earth has not been kind enough on the human civilization recently. It seems now that the whole idea of existence is Vague and ruthless.

With the advent of COVID-19, economy of majority countries around the globe has been hit very hard, even harder than the great recession of 2008, which many believe has eclipsed it. These turbulent times has an adverse impact on professionals all over the world. Company Secretary is no exception to this Pandemic. Company Secretary is a vital link between the Company and its Board of Directors, shareholders, government and regulatory authorities. This link is somewhat disrupted or even broken in some parts as the Board is not meeting, shareholders are not being informed, government is under insurmountable amount of pressure and regulatory authorities are finding it difficult to deal with this Pandemic.

ICSI Contribution for the betterment of the profession

We, the Company Secretary are responsible for effective Corporate Governance, establishing a link between Company and its stakeholders, conducting various meetings, advising Boards on different matters and many more. Under the current scenario, where business has come to a standing halt, manufacturing units are temporarily suspended, laborers and workers are forced to stay at home (social distancing), it has become extremely difficult for Companies to survive. The economy is shrinking; GDP forecast for

upcoming quarters is quite alarming. Loss of revenue and job loss is a matter of utmost concern for professionals nowadays. Our alma-mater (ICSI) has taken various steps to keep members as well as students informed about the latest developments by conducting regular Webinars and online Courses. In the current condition where Government is focusing more on social distancing than regular meetings, technology based “app” has proven to be a boon for knowledge updation and dissemination of information. COVID-19 has created a panic among different stakeholders especially among younger generation (students). It is natural to be afraid as these situations are new in its entirety. To reduce the fear mongering and stress among the students as well as members ICSI has been taking initiative of conducting workshop on Stress management. This is a positive approach in the right direction.

There is no deadline as to when this Pandemic will be over. With no curable vaccine for this lethal virus it has become terribly difficult for all of us to concentrate on work, family, our society etc. Students are finding it immensely difficult to concentrate on studies. They are left in a lurch where their future seems to be going nowhere, as the exams are postponed, classes are suspended, and movement is banned. To address these concerns of students, ICSI is striving hard to make ends meet. As the proverb says-“The Show must go on”, ICSI in its endeavor towards professional excellence is taking every possible steps so that studies of students is not hindered. As a pre-emptive measure, much before the advent

(COVID-19)

[https://elearning.](https://elearning.icsi.in/)

[icsi.in/](https://elearning.icsi.in/)

Impact on the Economy

Now the question arises- Until when should this continue and what is our effective response to recover from this monumental crisis? Who should pave the path to glory by taking the economy back to its normal? It is in fact we, the Company Secretaries who should come forward and utilize our rich knowledge base in the economic betterment of our country. Company Secretaries are masters of various legal, secretarial, finance and taxation concepts which is need of the hour. Our economy is on the verge of shrinking like never before. The repercussion of the global slowdown can be devastating in the form of layoffs, salary cut, no promotions etc. To overcome these hardships and repercussion is a challenging task. Company Secretaries can play an effective role in rebuilding economy by suggesting various measures to the government. Company Secretaries are well equipped with knowledge related to law of land and their practical experience and robust training

would come handy in these unwarranted situations. Promoters operate the Company efficiently on the advice of Company Secretaries. They provide various services related to company such as Amalgamation, demerger, Share transfer, Dividend payment, expenditure on CSR activities etc.

The role of Company Secretaries in rebuilding economy is immense. They are the professional who are competent, updated on latest development and proactive in decision making. In the current Pandemic where physical meetings are not the option, Company Secretaries may suggest various other modes of convening the General/ Board Meetings which may be in the form of Video-conferencing (VC) or other audio visual means(OAVM). Ministry of corporate affairs has recently come up with the guidelines with respect to meetings held through VC/OAVM and passing of various resolutions. http://www.mca.gov.in/Ministry/pdf/Circular14_08042020.pdf Company Secretaries are the pillars of Corporate Governance. No Company can survive and thrive in the absence of good Corporate Governance. Corporate Governance is about promoting corporate fairness, transparency and accountability. We are the person who provides representational services before various authorities such as: -

- Company Law Board
- National Company Law Tribunal
- Competition Commission of India
- Securities Appellate Tribunal
- Registrar of Companies
- Consumer Forums
- Telecom Disputes Settlement and Appellate Tribunal
- Tax Authorities
- Other quasi-judicial bodies and Tribunals

In this lockdown, various Company related services including but not limited to form filings with MCA has either been terminated or postponed to a later date. Whether late filing fees is applicable or waived is a matter of study. We are in a better position to guide the Company about the future course of actions and pave the path for various decision making by the top management. We can advice on effective utilization of funds on various CSR related activities as enshrined in Schedule VII of Companies Act, 2013. Recently

http://mca.gov.in/Ministry/pdf/Notification_10042020.pdf

It is rightly quoted by Rick Warren- “While it is wise to learn from experience, it is wiser to learn from experiences of others” Current Pandemic has already caused havoc, but we need to learn from nations which are successful in combating its threat. Our CS profession has also suffered a lot during this catastrophe. Now, the focus should be more on how to resume and revamp the structure. I put forward the following suggestions which can be handy and dexterous for the betterment of profession in turbulent times: -

- i. ICSI should focus more and more on Web based classes for Students.
- ii. ICSI should reduce the examination fees for upcoming two attempts by 50%.
- iii. ICSI should adopt vibrant technologies for dissemination of information so as to provide utmost quality of audio and video.
- iv. ICSI should stop all the Seminars and workshop involving gatherings for the time being (probably next 6 months).
- v. To attract more students to pursue CS course, focus should not be on how good our profession is, rather it should be on how well you can contribute for economic betterment of our great country as a Company Secretary.
- vi. ICSI should introduce a subject relating to Environmental/Natural science at all levels of Examinations (100 marks). This paper should be qualifying in nature. Marks obtained in this particular subject may not be added in total, but qualifying it (minimum 55 marks) should be made mandatory.
- vii. ICSI should focus on creating Environmental awareness by planting more trees, afforestation, minimizing plastic materials harming our environment. PCH should be provided to members for these activities.
- viii. ICSI should encourage article writing on Environment and its impact on profession to students as well as Members.
- ix. ICSI should take students (in lots) to places of Natural beauty as a part of Workshop and make them understand the importance of Nature. This will see a surge in the number of students and also their interest and curiosity in Nature will eventually increase.
- x. All cost of to and fro movement as well as lodging and food facility should be borne in 60: 40 ratio (ICSI-60, Students-40). This should be made a part of Curriculum.

IMPACT ANALYSIS OF TURBULENT TIMES ON COMPANY SECRETARIES

CS Sapna Bejwani

E-mail ID: sapnabejwani@gmail.com

As the world wrestles with the unprecedented implications of the COVID-19 pandemic, "we are facing a human crisis unlike any we have experienced" and our "social fabric and cohesion is under stress. "This was the assessment of UN Deputy-Secretary-General **Amina J. Mohammed** during a digital meeting of the Forum's COVID-19 Action Platform on 8 April. The beginning of this year saw a shift from growth and competitive instinct to survival instinct. The survival of not only organisations, but actual human lives. What had been limited to China and World news publications was slowly getting closer and before India knew it, an invisible enemy was on the large. Like Amina J. Mohammed rightly pointed, it's a human crisis before any other.

For the Companies and By the Companies

The impact of these turbulent times calls for measures that will strike a balance between public health and the economy. A number of initiatives taken by the Indian Government, the Ministry of Corporate Affairs and The Institute of Company Secretaries of India have come to light in the past few weeks. More than 2 Lakh companies filed CAR 2020 affirming their readiness to contribute to the best of their capacity in containing the spread, morbidity and mortality of the disease, and implementing a work-from-home policy. The MCA released a statement that said that it was, "fully cognizant of the difficulties faced by companies on account of the ongoing nation-wide lockdown and social distancing due to COVID-19".

The Ministry on taking note of various representations received from industry associations and corporates on the need to facilitate companies in taking certain emergent/ urgent measures in the face of extreme disruptions and dislocation caused by the pandemic, came out with various guidelines in these tough times. It allowed all meetings of Board of Directors upto 30th June to be conducted through Video Conferencing (VC) or other Audio-Visual means (OAVM), including meetings in which physical presence is other-wise required. Furthering the objective of facilitating corporate compliance, MCA later issued a circular allowing companies to conduct AGM through VC and OAVM, without compromising on other requirements of Law. Listed companies or companies with 1000

shareholders or more can conduct EGM through VC/OAVM and e-voting. For other companies, a highly simplified mechanism for voting through registered e-mails has been put in place. MCA also clarified that spending CSR funds for COVID-19 related activities and any contribution to the PM CARES fund or the State Disaster Management Authority shall qualify as a CSR expenditure under item no. (i), (viii) and (xii), of Schedule VII of Companies Act, 2013. The clarification further stated that payment of any ex-gratia amount made to temporary / casual workers/ daily wage workers (specifically for the purpose of fighting COVID-19 over and above the disbursement of wages, shall be admissible towards CSR expenditure as a one-time exception provided there is an explicit declaration to that effect by the Board of the company, which is duly certified by the statutory auditor. Companies in India are finding it difficult to maintain liquid stability and future cash flow projections are seeming vague at this point. Workers and employees are distressed and need absolute support of Companies in these lock-down days. Companies, therefore, require the support of Government and the Ministry to further the objectives of economic and human welfare. We, as executives of Companies and Corporate Advisors at large have found ourselves playing a significant role in these unprecedented times.

Impact on the CS Fraternity

Human capital is the essence of our profession as Company Secretaries. Professionals have expressed that the impact of COVID-19 pandemic could be experienced way before the lock-down and work-from-home policies were put into place in India. With global travel being restricted starting January 2020, many engagements had to be terminated, or at least postponed to an indefinite time in the future. The impact of COVID-19 in China, US and Europe was visible to the corporates in India, and even before the impact struck us at large, some pro-active measures were put into place. “Spend on essentials” was a rule not only implemented by households to ensure liquidity. All tasks and business engagements of companies that could be postponed to the future without impacting ordinary business operations were immediately dis-engaged with. This led to several consultancy contracts being put on hold and it was our moral and professional duty to agree to the dis-engagement.

The government eased compliance requirements by companies to decrease regulatory pressure. This was a plus as well minus for us all. With EGMs and BMs being allowed to be conducted through VC and OAVM, Company Secretaries will now be involved in ensuring smooth, proper and timely conduct of these meetings. From sending notices to conducting e-voting, from concluding the meetings to reporting compliances, Company

Secretaries will be using the aid of technology to conduct these meetings. There will be various hurdles and difficulties given the technical limitations, but confidence is placed on Company Secretaries to ensure smooth compliance. Company Secretaries will play an impeccable advisory role for Companies willing to contribute to CSR in the light of COVID-19.

Getting the Board together and ensuring passing of resolution for the same is an urgent need. Company Secretaries forwarded their expertise and assistance to compliant companies who filed CAR form with MCA. The scope of work in our profession has ensured there is no dearth of responsibilities to be undertaken in the current times. Although, professionals face technical difficulties and limitations with respect to communications in ensuring compliance as economic survival remains top priorities for Companies right now. It is therefore upon us professional to contribute to Companies and not merely be Cost centres adding to the dismay. New Associate Company Secretaries have found themselves starting their career in times where opportunities are limited till things get back to normal. There is a hiring freeze across the globe. This is the time to acquire skills that will give us the edge in the competitive market that it will be once the pandemic slows down. Just as companies are facing difficulties in dispensing funds and salaries at the moment, practicing Company Secretaries have the financial crunch facing them. Maintaining offices while employees are working from home is a challenge. In the current scenario, cash inflow is highly doubtful. Although, keeping the humanitarian and moral ground, professionals have been tirelessly extending their services and ensuring the job security of everyone under them.

The students of the ICSI are facing a distressed time where their career time-line has now become unpredictable. They remain confined to their homes and are putting in extra hours studying their materials, but external support of teachers and seniors has become restricted. Class-rooms across the nation were shut down. It is commendable that technology played a huge role and many professionals came out with virtual help-lines and classes on subjects and topics to help students over-come this tough time. Trainings were shifted to e-mode wherever necessary to enable students ensure timely completion. E-academic program and e-msop guidelines were issued by ICSI in this regard. Students undergoing long term training were relieved to know that this lock-down period would also be counted in the training served period. As of now, examinations are scheduled to be held on time, i. e. June. It is the first attempt on CSEET examinations and it will be interesting to see the

turnout and the outcome of the same. While students may feel lost, ICSI has ensured that help-lines work for them and has been troubleshooting difficulties for them.

Role of Company Secretaries:

In this fight against COVID-19, ICSI preached the mantra of “Together We Can, Together We Will”. ICSI’s remarkable contribution to PM CARES fund showed responsible solidarity the nation. It also urged members to contribute appropriately in this time of need. In the light of the pandemic, each of us have realised the integrity and importance of the word ‘Company’ in ‘Company Secretary’. As a fraternity, it is our duty, our *dharma* to be among the pillars of resurrection of the corporate economy. As work-from-home policies were implemented, Company Secretaries in employment as well as practice shared the responsibility of advocating for the social distancing norm. The most difficult tasks in these times involved distribution of responsibilities, accountability for work allocated and maintaining communication on a daily basis. Company Secretaries went beyond their scope of work to ensure appropriate work-from-home policy could be implemented in their work spaces. Every company is currently facing a number of difficulties in keeping the operations going. As advisors to the Board, it is our responsibility to ensure that Companies remain aware of any relaxations extended to them and ensure procedures in this regard are carried out smoothly. If the responsibilities being given to us are beyond our scope of work, on moral grounds we can extend all the help companies need at the moment. Revival of India’s economy will be directly proportional to successful operations of companies. This will ensure people don’t lose jobs only because companies are unable to ‘manage’ them. Working-from-home should not stop us from giving work the undivided attention it needs. It is our job and work profile to ensure governance policies are place. As Company Secretaries, we should ensure these policies are communicated to employees and workers. Strict compliance with labour laws are need of the hour and ensuring that workers don’t suffer out of negligence will be a professional and humanitarian duty of ours. COVID-19 has made us close all borders but that should not mean any over-seas engagement is dispensed with. Maintaining communications and displaying solidarity to clients, fellow professional and colleagues’ over-seas will not only reflect empathy on our part but also ensure continuity of engagements post lock-down. As members of the Institute, it is our duty towards it that we stand by its motto, now more than ever. Say “Yes” to anyone in need or help and “No” to non-compliances, keeping companies in check.

Humble suggestions

There is an enormous contribution each one of us can come forward with in this pandemic struck country. These are a few suggestions to ICSI and other members of the fraternity

1. In ensuring that health remains top priority, we should not avoid mental health stress that every professional in the country feels right now. There has been a sudden change in lifestyle and increased pressure of performance, in addition to the fight of survival. Only when a person is motivated and feeling well, will he or she be able to support others. When it comes to taking care of employees, the goals should be: "keep them well, keep them employed and keep them mentally healthy. "ICSI is requested to conduct short webinars by life coaches for members on weekends to ensure that professionals exercise healthy lifestyle norms and avoid stress and anxiety in these tough times.
2. Students need us now more than ever. With Board exams postponed in many states, students remain uncertain about their future plan. It being the first term of CSEET, ICSI is requested to conducted webinars for students taking this exam in the coming months to help them understand the kind of questions that will be asked. ICSI measures for students undergoing training is highly appreciated. With classes shut down, ICSI should come up with a platform where students who need help can contact their seniors or other faculties in our fraternity for help.
3. There is a hiring freeze across the nation and due to cost constraints, Company Secretaries are finding it difficult to survive in companies. Many are not getting work opportunities with appropriate pay. With the economy in slow-down, ICSI will have to come up with recruitment drives to encourage employment for new members.
4. It is requested to consider deferment of membership fees for the current year.

We, the members of ICSI stand in solidarity with fellow members, students and employees of ICSI and the entire nation in implementing policies in force by the government and in assuring constant assistance to Corporate India.

References

<https://www.un.org/sg/en/content/sg/press-articles-and-opinion-pieces>

www.mca.gov.in

IMPACT ANALYSIS OF TURBULENT TIMES ON COMPANY SECRETARIES

CS Tavsheen Kaur

E-mail ID: tavsheenkaurSabharwal@gmail.com

On 24th March 2020, our Hon'ble Prime Minister Shri Narendra Modi announced a nationwide lockdown as a preventive measure against the COVID-19 pandemic. The entire economy and the normal lives of the people came to a complete standstill. Former Reserve
(COVID-19)
pandemic in India as the "greatest emergency since Independence". RBI in the Minutes of the Monetary Policy Committee Meeting¹⁵ said that most other sectors of the economy will be adversely impacted by the pandemic, depending upon its intensity, spread and duration. However, upside growth impulses are expected to emanate from monetary, fiscal and other policy measures and the early containment of COVID-19.

The effects of these unforeseen circumstances are also being felt by Company Secretaries working in different sectors. The crisis coincides with the filing period of forms such as ACTIVE and DIR 3 KYC and compliances related to Annual General Meetings as well as Board Meetings of client companies. Being a pandemic COVID-19 has interrupted the working of companies around the globe and hence it would be a testing time to provide uninterrupted services to overseas clients.

With the closure of NCLT benches for the purpose of judicial work, the professionals now find themselves with a number of pending and delayed hearings. For professionals working in the taxation sector filings related to Income Tax, TDS, Advance Tax, GST, VAT etc have been put on hold. Even though the capital and debt market service as notified by SEBI were exempted from closures¹⁶, the professionals working in these sectors would be required to cope with the ongoing market volatilities. While work from home is not a new concept, it would certainly be challenging to establish a sustainable work flow to achieve

¹⁵RBI Press Releases, Minutes of the Monetary Policy Committee Meeting March 24, 26 and 27, 2020, https://www.rbi.org.in/Scripts/BS_PressReleaseDisplay.aspx?prid=49659

¹⁶SEBI Notification COVID 19, Circular No.: sebi/covid-19/2020/01, https://www.sebi.gov.in/legal/circulars/mar-2020/sebi-notification-covid-19_46425.html

the desired productivity. In such circumstances, simply staying on top of and adapting new developments is a priority.

To grapple with these tough times companies are carrying out measures to keep their staff anxiety levels at a minimum but there is an undeniable pressure mounting on such companies as well. Various Ministries and Regulatory Authorities have announced a number of measures to mitigate the overall impact on the economy as well as on the common man. As a corporate professional, a company secretary has a vital role to play in the effective implementation of these measures.

Ministry of Corporate Affairs (MCA) in its circular dated 28th March 2020 clarified that any contribution made to the PM CARES Fund shall qualify as CSR expenditure under the Companies Act, 2013¹⁷. This will not only act as a motivating factor for the companies but will also help professionals to analyse and consult on the basis of the compliance requirements of their client companies. In a time where valuable contributions by companies is of great significance in a country's fight against this pandemic, the professionals can provide appropriate guidance to the CSR Committee of the company.

Considering the various challenges faced by the companies to pass ordinary and special resolutions of a special nature under Companies Act, 2013 due to the current circumstances, MCA issued guidelines for conducting members' meetings through Video Conferencing (VC) or other audio-visual means (OAVM)¹⁸. These guidelines are applicable only for conducting EGMs and will have their own share of practical difficulties. Since these guidelines and their implementation is at a very nascent stage, the professionals will initially have to face certain challenges in adapting them. However, their effective implementation will make things smooth for companies who will be able to go ahead with the further compliances once the requirements in relation to the resolution are satisfied.

To ensure the readiness of the companies to contribute to the best of their capacity to contain the spread, morbidity and mortality of the disease, MCA introduced Companies

¹⁷ MCA, eF. No. CSR-05/1/2020-CSR-MCA,
http://www.mca.gov.in/Ministry/pdf/Circular_29032020.pdf

¹⁸ MCA, General Circular No. 14/2020,
http://www.mca.gov.in/Ministry/pdf/Circular14_08042020.pdf

Affirmation of Readiness towards COVID-19 (FORM CAR)¹⁹ applicable to all Indian companies/ Foreign companies/ LLPs/ Foreign LLPs. Being voluntary in nature, the form affirms the preparation of the company and their contribution towards joining the movement to fight against the spread of the disease. Even though no penalty or enforcement related action as such is applicable the professional's role here acts like a window to enable the authorities to know if the company/LLP is in compliance of COVID-19 guidelines including work from home policy. Hence, it enables the professionals to act like a source from which the authorities can be assured that the company has kept in mind the various interests of its employees.

In order to facilitate companies and LLPs registered in India to make a fresh start on a clean slate MCA has introduced Companies Fresh Start Scheme, 2020 and revised the LLP Settlement Scheme, 2020²⁰. This scheme grants a one-time opportunity to companies and LLPs so as to enable them to complete their pending compliances by filing necessary documents including annual filings without being subject to a higher additional fee on account of any delay. This will provide professionals the scope to substantially reduce the penalty burden of their client companies and LLPs especially at a time where financial stability is a major concern for the clients. The professionals at the same time will also aid the authorities in converting their clients into more law abiding and compliant entities.

Apart from these, MCA has implemented a number of special measures²¹ to support and enable Companies and LLPs in India to focus on taking necessary measures to address the COVID-19 threat, including the economic disruptions caused by it which have reduced their compliance burden and other risks.

SEBI has also provided a number of relaxations²² to the stakeholders in wake of the current nationwide lock down. It has extended the timelines for processing of various investor

¹⁹ MCA, Company Affirmation of Readiness towards COVID-19
http://www.mca.gov.in/Ministry/pdf/Car_22032020.pdf

²⁰MCA, General Circular No. 12/2020,
http://www.mca.gov.in/Ministry/pdf/Circular12_30032020.pdf

²¹MCA, General Circular No. 11 /2020,
http://www.mca.gov.in/Ministry/pdf/Circular_25032020.pdf

²² SEBI, Circular No.: SEBI/HO/MIRSD/RTAMB/CIR/P/2020/59

requests pertaining to physical securities and compliance and disclosures to be made under SEBI Regulations and various SEBI circulars. Relaxations with respect to compliance requirements for Mutual Funds, Portfolio Managers, regulatory filings for Alternate Investment Funds and Venture Capital Funds etc have been provided²³.

The Government has been announcing measures for the stability of the country's financial system. Our Hon'ble Prime Minister Shri Narendra Modi announced the formation of the COVID-19 Economic Response Task Force on 19 March 2020. The tax authorities have responded quickly to the changing circumstances, the Finance Minister made a number of announcements related to the economy such as extending last dates for filing GST returns and income tax returns. The due dates for the Sabka Vishwas (Legacy Dispute Resolution) Scheme 2019, customs clearances and for compliance matters under the Customs Act and associated laws has been extended. These measures do provide a temporary relief to the pressure on both the Companies and the professionals but at the same time would build up workload once the lockdown is lifted.

Currently, the companies not only have to assess the impact of the multitude of changing circumstances created by COVID-19, they also have to figure out the various new laws and regulations to determine how they might be affected. The role of a Company Secretary as a professional here is crucial to throw light on a host of additional laws that a company would attract and ensure the compliance with the same. Undoubtedly, once the lockdown is lifted the companies may go through some initial instability and unrest before they reach to a point of settlement. The various reliefs introduced by the authorities would be successful, provided their productive implementation is ensured by the professionals. The right guidance under the right circumstances would certainly fill up the gaps formed on account of this crisis.

Recently CARS24 an online marketplace for buying and selling used cars introduced a voluntary pay cut for employees that would be invested as ESOPs of the firm. The company decided to allot ESOPs to their employees worth two times the amount they

https://www.sebi.gov.in/legal/circulars/apr-2020/relaxation-in-adherence-to-prescribed-timelines-issued-by-sebi-due-to-covid-19_46511.html

²³ SEBI, Circulars dated March 30, 2020,

<https://www.sebi.gov.in/sebiweb/home/HomeAction.do?doListing=yes&sid=1&ssid=7&smid=0>

invest. This is a good example of how a company can keep the financial wheel running as well as ensure that the salaries of employees are not delayed amid COVID-19 crisis. This is the form of thinking process that professionals like Company Secretaries can apply in their respective specializations.

COVID-19 may produce distressed situations in companies, where the stakeholders would rely on the companies to rebuild their confidence and seek additional information and resources from the company. Here a Company Secretary would act as a bridge between the company and its stakeholders and help maintain the required overall balance and stability in the system. The professional should understand the needs of borrowers, lenders and shareholders and manage the communication with the stakeholders which will enable him to stay updated with the upcoming issues and also take informed decisions.

With work from home another question faced by the companies is how to secure data and assets from cyber threats. The professionals working in these sectors can come up with the required solutions to such concerns which would not only help the companies in this period but will also greatly contribute to the future working modalities of such companies. This will not only ensure smoother revival but also look after an uninterrupted and sustained roadmap for the companies.

As the situation settles, governments and their budgets will be under a great deal of pressure. They will likely begin to look for ways to increase revenues from sectors where the impact of COVID-19 may be less. Steps to boost and support the majorly affected industries will have to be taken both in the short as well as in the long run. The plan of action and strategies of the government after the country overcomes this crisis will be a great deciding factor for the future of the Indian economy. Even though most expert agencies predict a quicker revival for India in comparison to other countries, the Government needs to ensure that all the measures and stimulus packages which are introduced during the outbreak are utilized effectively.

The monetary, fiscal, and financial policies together should aim to mitigate the impact of the COVID-19 shock and to ensure a steady, sustainable recovery once the pandemic is under control.

The Government should work with banks, NBFCs, insurance companies, and large corporates and outline required strategies for increasing the market liquidity. The Government should aim at inspiring confidence in foreign investors so that they do not hesitate to invest in the country. The role of professionals here would be indispensable to help the authorities to know the ground level realities and plan accordingly. Also, the implementation of these plans will heavily depend on the functioning of professionals.

Clearly, having open lines of communication with the relevant authorities is essential, so that the professionals can seek clarification if they have queries. The professionals should adopt a holistic approach to analyse and assess the situation and circumstances in totality. They should work towards an effective revival and immediately inform the relevant authority of the issues that they face with respect to any provision or deadlines.

Hence, if the Government and Professionals work together with determined efforts, they would surely be able to lessen the turbulences and their impact on the economy. What lies ahead might be an unusual obstacle for the country but combined efforts shall really help in a secured escape.

IMPACT ANALYSIS OF TURBULENT TIMES ON COMPANY SECRETARIES

CS Mohsin Momin

e-mail id: csmohsinmomin@gmail.com

As you all are aware that the Pandemic Coronavirus, COVID-19 have impacted to world at large, it has created a fear of life in the minds of human beings. It has emerged in the form of crisis to the whole world. Due to the contagious nature of the disease, lockdown, social distancing, are among the measures to prevent being infected by COVID-19. Hundreds of countries in the world have been adopting the strategy of lockdown sooner or later. It involves restriction in the movement of human beings mainly which in turn involves restriction and shutting of financial activities that were being carried by human beings. In the wake of prevention of spread of COVID-19, the economy has faced huge losses within this phase of 2 months time. All the economic activities are brought to a standstill not only in Indian but throughout the world at large. Lets begin with understanding the impacts of COVID-19 in the micro sense only in India.

Financial Impact:

On 24th of March, 2020 our Hon'ble Prime Minister, Mr. Narendra Modi announced a 21 days lockdown in which he has urged the citizens of the nation not to step out of the home and remain there where you are. At the same time, all the schools, colleges were instructed to remain shut and all the companies, shops, malls, everything to remain closed except the companies and those activities involving provision of essential services or goods. Accordingly, industries related to pharmaceuticals, agricultural commodities were allowed to carried on its operations. Most of the companies and financial activities operate on non-essential activities. These industries are immensely affected by the lock down. Such industries for survival has left with only one option and that too instructing its employees to work from home. "Work from home" is a strategy or a weapon used by companies to minimise its losses during this turbulent times. Since, the lock down period is longer, many companies are cutting down its employees base either by terminating them or by retaining them without salary for the period of lock down. Further, from time to time, due to the situation created by the threat of infection of COVID-19 being out of control, the Lockdown in the country is continuously extended. And right now, Lockdown 4.0 is going on. Going further to this issue, lets analyse the impact on the Company Secretaries of the nation during this turbulent times.

1) Practicing Company Secretaries

PCS are mainly receiving work from their corporate clients. Now during lock down, the corporates and industries are widely affected so does the PCS. The industries and corporates cannot run their businesses effectively hence, they could not start new projects which in turn leading to a halt in their fund raising activities like issue of equity shares, issue of Debentures or NCDs or procuring loan from financial institutions etc., Corporate restructuring activities like mergers, demergers, amalgamations, takeovers though in the schedule of the corporates are being postponed for the time being. Moreover in the wake of COVID-19 as a preventive measures and with a view to support the government in battling the spread of COVID-19, the Ministry of Corporate Affairs have come up with several notification including relaxation of additional fees for the forms to be filed till 30th September, 2020 by bringing the CLFSS scheme, 2020. MCA has also relaxed some of the key requirements of companies Act, 2013 viz., gap of more than 120 days are allowed for conducting a Board Meeting. One of the outcome of these relaxations provisions is that the corporates will try to take full benefit of the same and will postpone or delay its filings mainly until the lock down ends and also will not take interest in conducting Board meetings during the lock down period also by way of VC and other electronic means.

All these situations have a direct impact/bearing on the working/business of the Practicing Company Secretaries. Although PCS have been working from home or any where else during normal course of business but the work flow has been obstructed from their corporate and industrial clients leading to less income for the months of March and April for PCS and also the corporates may be postponing the fees that is already due, taking the shelter of lock down and closure of companies during the lock down period.

2) Company Secretaries in Whole-time Employment :

CS in whole-time employment play a very vital role in directing or guiding the management and Board of Directors in the field of compliance. Now, due to the threat of COVID-19, the Management including Directors are either not working or they are working from home leading to the less strategical activities taking place in the Companies which in turn has reduced pressure on the CS in whole -time employment who are even willing to work from home. Reiterating the issues which are enumerated above, CS in whole -time employment are also facing the same. Needless to say, owing to the relaxations given by MCA, compliance filings will take place after the lock-down period

and also the Board meetings will be postponed except for the matters requiring urgent attention. Along with MCA, SEBI has also given extension for filing the returns falling in their purview. Owing to the uncertain environment and news of fear and resentment all over, the salaries during the period of lock down can be cut down or can even be skipped by the corporates which is the fear nowadays in the mind of CS in employment. After the lock down is completed, many corporates may come up with the strategy of capital reduction so as to fight with the financial impact and to survive in the market which may result in loss of jobs of many CS as the minimum capital requirement for appointing Company Secretaries is Rs. 10 Crores for private Companies.

3). Company Secretaries in Teaching Profession:

Talking about the Company Secretaries in teaching field, they are also impacted. In the wake of COVID-19, the educational institutions are the first that are instructed to be closed. Although, learn from home is an alternative but owing to the less preparedness of such situations, this idea may not be working to the fuller extent.

Lastly, I would point out that due to relaxations in compliance and extension of the due dates, CS have to be on their toes to be abreast with the latest happenings as they were used to and settled to the compliances in the normal course of business. New due dates and new extensions will bring them pressure to keep an eye on the new due dates and extension so that they can guide the management accordingly.

4) Role of Company Secretary in rebuilding the economy.

After completion of lock down period and after the threat of COVID-19 is over, the economy will slowly and steadily start to revive. The businesses and companies would start its operations. In the outset, many corporates would come up with fund raising activities like issue of equity shares, IPO, issue of Debentures and other debt securities, raising of funds from banks or NBFCs to fund their oncoming projects so as to smoothen the operations of the business or to even restart the business, in such scenario, Company Secretaries would play a vital role in rebuilding the economy. Many corporates would also go for corporate restructuring which will entail the requirement of deployment of Company Secretaries so that the activities run in the four corner of companies Act and allied laws. FDIs will also flow in the country leading to compliance of Foreign Exchange Management Act as many industries are planning to exit China to setup their manufacturing activities in

India. Needless to say, the Company Secretaries professional would play a pivotal role in rebuilding the economy. More and more requirement of Company Secretaries will be created in the market.

In this turbulent times, the Institute of Company Secretaries of India is playing a great role for the betterment of Indian Economy. Noteworthy to state that the ICSI has collected Rs. 25 lakhs fund and contributed to PM cares fund created to combat COVID-19 in the country. Meanwhile, I would suggest that the Institute should also come up with certain measures to facilitate its members in this turbulent times like extension of due date for paying membership fees. Likewise, due dates of admission fees and exam fees should also be extended accordingly. Institute should also strengthen its existing campus placement recruitment drive in order to provide employment opportunities to fresher CS.

1. (Reference: MCA circular No.12/2020 dated 30.03.2020)
2. (Reference: circular No.11/2020 dated 24.03.2020)
3. (source : Financial Express, March 19, 2020)
4. (source: Electronic Media, Marathi News channel, ABP Mazha)

IMPACT ANALYSIS OF TURBULENT TIMES ON COMPANY SECRETARIES

CS Sarika Jhambale

e-mail id: sarikajambhale3@gmail.com

Covid-19, has become the most used and searched word in recent months. This microscopic virus has proved to be catastrophic for human civilization. It is one of the most powerful catalysts of turbulence in human history. Turbulence it brought can be felt all over the world right from as small unit as an individual to larger unit like a continent. No household, no business, no profession seems to be untouched by the turbulent time initiated by COVID19. It has brought situations that are unprecedented.

Like any other professionals we Company Secretaries are also impacted by the waves of turbulence brought and being brought (as it is a continuous process) by COVID 19 in the world. Till date we are unaware and unsure about length of time it will remain with us affecting almost all the aspects of our profession in ways and at extents that will unfold with the passing time.

In order to plan, organize and execute our future steps first of all we need to study and analyze impact of changes and challenges brought by this disease in the economy and consequently impacting our profession. In my views turbulence in the economy may impact our profession in ways, which may include but are not limited to the followings. For the sake of simplicity and better understanding let us divide Company Secretaries into two broad categories

A. Impact on Company Secretaries who are in employment: -

- 1) **Some of us may loose our job:** - Many small business houses may dissolve the post of Company Secretary in their Companies. This is a bitter truth that some of us may have to face, many Companies which are not mandatorily required to have a Whole time Company Secretaries but were currently having one for better compliance and governance with futuristic view may wipe out this post itself from their organizations thus resulting in layoffs of Company Secretaries.
- 2) **Some may experience reduction in salary:** -Possibilities are that Companies which are mandatorily required to appoint Whole time Company Secretaries may reduce their salaries by percentages which may extend to (but not limited to) 50% depending upon how much the respective business is affected economically.
- 3) **Company Secretaries may require deviating from the scope of work:** -In most of the Companies scope of work is well defined and we work accordingly, but since

economy is undergoing some very fast and new changes which may result in change in Laws, Rules and Regulations, it is quite possible that the scope of work of Company Secretaries may change dramatically. There may be addition of some kind of work we never did before. Also, there may be reduction in certain work we may have been doing for many years.

- 4) **Work from home may become new normal:** - Thanks to the technology especially Internet that has made our life much easier. Just few months back we were accustomed to work in offices with our colleagues but this may soon become a thing of past and working from home may become new normal. In addition to this international and national travel may be curbed and instead of physical attendance we may resort to video conferencing.

B. Impact on Practicing Company Secretaries: -

- 1) **Initially Practicing Company Secretaries (PCS) may experience sudden increase in demand:** - This may sound a bit unusual but its quiet likely that work flow may increase for PCS, as due to unprecedented changes in economy and its impact on various industries there may be flooded requirements for legal opinions (with respect to projects/deals/agreements etc. hit by the pandemic), winding up, reorganization, re-structuring, amalgamations, takeover, acquisitions etc. (which organizations may be forced to undergo as a combat measures against economic devastation), this may increase demand of PCS temporarily especially for those who are having experience in respective fields.
- 2) **In spite of increase in demand and workflow Practicing Company Secretaries may suffer financially:** -unusual times bring unusual consequences. Work opportunities may increase for practicing professional but still they may suffer from economic crisis, this may happen because the clients may not be in the position to pay or may pay less compensation or may delay payments. Thus, more work would not mean more money.
- 3) **Company Secretaries who have their own office setup may require to take various cost cutting measures:** -Practicing Company Secretaries having their own office setups may require to bring down overheads in order to combat economic crisis. They may be forced to restore to some tough measures which may include but are not limited to the followings:

- a) **Layoff employees:** - Tough times require tough decisions. This may be temporarily required to survive the turbulent times.
 - b) **Encourage employees to work from home:** - In order to curb rent expenses and other overheads it may be required to sacrifice big spaces and shift to small office set-ups, therefore, it will be pertinent to encourage employees to work from home.
 - c) **Start working completely from home:-** It may become difficult to bear office expenses and work from home may become need of time. Hence, we should be ready for the same by making ourselves technologically equipped.
 - d) **Conservation may become new trend:** - every drop of water has its own place in the ocean in same way every small step of conservation will become important be it conservation of electricity, stationary objects, travel expenses, office interior expenses etc. in contrast to office beautification thought to be normal few months ago conservative low cost offices will be in trend.
- 4) **In long run Practicing Company Secretaries may face shortage of work:** - Though initially Practicing Company Secretaries may experience increase in demand and flow of work (as mentioned in point B (1) above) but this may be only for sometime. In case economy does not recover soon results may be fatal for many industries and business houses directly or indirectly effecting amount and quality of work received by Practicing Professionals.
- 5) **The type of compensation may change:** -Mostly compensation has been charged and accepted in terms of currency by most of the professionals but since liquidity may be an issue for the Companies due to downfall in economy there are chances that we may have to accept compensation in form of shares, percentage in future profit, work assurance (with less monetary compensation) etc.

In order to survive as a professional (whether in employment or in practice) in the crashed economy updating and acquiring knowledge along with finding appropriate ways to apply it seems to be the best way out. Also, developing tech systems is equally essential so that lockdowns, quarantines etc. have least impact on day to day working. Besides, communication systems and skills need to be improved. One of the greatest skills is to remain calm and patient at the times of crisis, we need to not only keep ourselves calm but should also be in the position to deal with anxiety and panic amongst our clients and be able to provide them with best solutions in the given condition.

Institute of Company Secretaries of India has always worked for the betterment Company Secretaries profession. In these challenging times The Institute may help by providing webinars, e-conferencing, online articles for knowledge updating. Besides, various platforms may be provided to the members so as to enable them to showcase their knowledge and capabilities so that Company Secretaries come up as professionals who can not only save themselves but also help rebuild economy.

Role Company Secretaries may play in rebuilding the economy

Company Secretaries may play a vital role in rebuilding the economy as they are one amongst some of the professionals who are capable to understand practical difficulties and come up with appropriate solutions which may arise in front of various business entities.

Company Secretaries may do their bit by giving following services:

- Making a rough frame of the problems and challenges that may be faced in the future due to long term adverse effect of the pandemic in the world economy along with suggesting appropriate solutions that can be applied and measures that can be taken so as to reduce the losses and difficulties as far as possible.
- Helping the business houses in bringing the legal and regulatory difficulties to the notice of Government and other authorities so that a solution can be found and relaxations may be sought out.
- Suggesting best ways of restructuring and re-organizing to business houses so that expenses and losses can be minimized.
- Optimum use of Coronavirus relief funds for the small business units may be suggested so that startups and small industries do not suffer irreparable loss.
- By listing out and bringing to the notice of authorities extent/systematic manner of cash infusion, tax relaxations and other helps that may be required by various sectors particularly basic sectors on which other sectors depend so that economy do not collapse completely. For example agricultural, medical, communication sector.

“United we stand divided we fall” this old saying proves itself right in many testing circumstances. In an attempt to achieve economic balance as soon as possible, Company Secretaries are not only required to plan and work for individual survival but also should aim towards economic survival and betterment of entire Company Secretaries Fraternity by offering our best services to the business sectors, government authorities, regulatory authorities and society at large.