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Company Secretaries of India

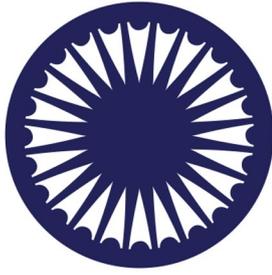
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IN PURSUIT OF PROFESSIONAL EXCELLENCE

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ICSI - WIRC E-Newsletter  
JUNE-JULY 2020

AATMA NIRBHAR  
BHARAT

**Vision**

"To be a global leader in  
promoting good  
corporate governance"

**Motto**

सत्यं वद। धर्मं चर। इष्टाकं कुरु। अविदुः कुरु।  
इष्टाकं कुरु। अविदुः कुरु।

**Mission**

"To develop high calibre  
professionals facilitating  
good corporate governance"

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**e-FOCUS May 2020 Correction:**

*In May 2020 issue of FOCUS, the Article titled "Stamp Act Amendment" was co-authored by twin sisters CS Shivangi M Abhyankar ([shivangi@snaco.net](mailto:shivangi@snaco.net)) and CS Shivani M Abhyankar ([shivani@snaco.net](mailto:shivani@snaco.net)), Associates at S.N. Ananthasubramanian & Co., Company Secretaries. The typographical error caused in the May 2020 newsletter is regretted.*

**Disclaimer :**

Absolute Care is taken to prepare this article however inadvertently if any errors occurs then the Author shall not be held responsible for any such cause. The Content published is only for educational purpose and shall not be construed as rendering of any Professional Advice in any manner whatsoever. The Readers must exercise their own Judgement and refer the original source before any implementation. Further the content is an original work of the author and may be used only after written permission.

## Foreword

*“We are responsible for what we are, and whatever we wish ourselves to be, we have the power to make ourselves. If what we are now has been the result of our own past actions, it certainly follows that whatever we wish to be in the future can be produced by our present actions; so we have to know how to act.”*

The profession of Company Secretaries, its journey of more than half a century, the recognitions received and the responsibilities bestowed upon is quite an exemplary reiteration of the above words of the great luminary, Swami Vivekananda. Setting aside the micro discussion, the quote holds equally true for the Indian Economy as well. The past is our guide, the future is where we want to be.

An integral part of the Independence Movement, our freedom struggle was the Swadeshi movement. The movement was a clarion call to make the nation economically independent before seeking independence otherwise. Decades later as we stand today to become a Global Super Power amidst dealing with struggles brought forth by the Pandemic the thought to make India self-reliant with the “**AATMANIRBHAR BHARAT ABHIYAN**” seems not only plausible but the need of the hour.

As the nation treads on this journey of becoming self-reliant, we as partners of the Indian Growth Story would definitely look out for avenues, wherein we can provide our wholehearted support holding forth an extremely professional approach in imbibing good governance in all spheres of activity.

I appreciate the efforts taken by WIRC-ICSI in dedicating this newsletter on the theme of **AATMANIRBHAR BHARAT** and all the members who have contributed their research articles. I would also like to commend the screening committee of researchers who have selected the Articles for this e-publication.

Wishing the team of e-FOCUS and WIRC all the best for all your future endeavours.

CS Ashish Garg  
President  
The Institute of Company Secretaries of India



*“Be united, persevere, and achieve self-Government, so that the millions now perishing by poverty, famine, and plague may be saved, and India may once more occupy her proud position of yore among the greatest and civilized nations of the world” – Dr. Dadabhai Naoroji*

Dear Seniors, Professional Colleagues & students,

Today is the 164th birth anniversary of Lokmanya Bal Gangadhar Tilak, who was famously described as the ‘Maker of Modern India’ by Mahatma Gandhi. Lokmanya Tilak’s visionary theory of nationalist economics is the most relevant in achieving self-reliance and making of *“Aatma Nirbhar Bharat”*.

The current pandemic and its worst after effects on Indian economy are yet to be visibly seen and <sup>1</sup>*at this time it is essential to keep focus on the economic aspect of Swadeshi as laid down by Lokmanya Tilak and plan accordingly*. Apprehending the worst after effects of pandemic the Government through the Aatma Nirbhar Bharat Abhiyan (ANBA) has announced flurry of measures, legislative and financial, for agriculture and allied sectors, industries from various sectors, especially, Civil Aviation, defence, energy, housing, social sectors, etc. to reset Indian economy to a positive restart.

Company Secretary, being a pivot profession in nation building is rightly placed to become a catalyst in the making of ANBA and become a reckoning financial power house of the world. The Focus issue in hand, brings various aspects of ANBA and role of Company Secretary in making it a great success.

In short, we must tighten our belts to make abovementioned but modified quote of the Grand Old Man of India, Dr. Dadabhai Naoroji, *“Be united, persevere, and achieve self-Government, so that the millions now perishing by poverty, famine, and plague Covid 19 and its economic after affects, may be saved, and India may once more occupy her proud position of yore among the greatest and civilized nations of the world.”*

Truly yours,

Rahul Sahasrabuddhe  
Chairman  
WESTERN INDIA REGIONAL COUNCIL OF  
THE INSTITUTE OF COMPANY SECRETARIES OF INDIA

Place: Thane  
Date: July 23, 2020

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<sup>1</sup> Extract from a paper authored by Dr. Geetali Tilak and Dr. Deepak Tilak published in International Journal of Research in Economics and Social Sciences titled as Lokmanya Tilak’s Ideology of National Economics. (<http://euroasiapub.org/wp-content/uploads/2018/04/36ESSMarch-aar1.pdf>)

# ROLE OF COMPANY SECRETARY VIS-À-VIS AATMA NIRBHAR BHARAT ABHIYAN



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## 1. INTRODUCTION

The outburst of Covid-19 pandemic has proved to be an unparalleled jolt to the already precarious Indian economy. With the prolonged nationwide lockdown, global economic recession and related interruption of demand and supply chains, the economy is likely to face a prolonged period of deceleration. The said COVID-19 pandemic has already caused an unprecedented human and health calamity with its revelations more frightening than even a fiction and further because of the prevailing uncertainty about its severity and potential length of existence the human cost of the COVID-19 is ironically going to be unimaginably high. Foreseeing the potential magnitude of the COVID-19 calamity, IMF Managing Director Kristalina Georgieva is noted to have said

*“We anticipate the worst economic fallout since the Great Depression, — The coronavirus pandemic will push the global economy into the deepest recession since the Great Depression, with the world’s poorest countries suffering the most”.<sup>2</sup>*

However, comparatively India has so far been in a much regulated position, because of the Government of India’s prompt actions taken to fight against

it like lockdown, social distancing etc. To overcome these testing times, posing a severe

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<sup>2</sup> <https://time.com/5818819/imf-coronavirus-economic-collapse/> (Last visited on April 20, 2020)

threat to the economy, the Government of India has come up with the “Aatma Nirbhar Bharat Abhiyan” (ANBA) that promotes local economy under which a special and comprehensive economic package of Rs 20 lakh crore (i.e. around 10% of India’s GDP), has been announced with a view to bring the economy back on track. This article attempts to portray very briefly the status of the Indian economy in the pre-Covid-19 period, examine the measures taken to restructure the economy, assess the expected role of Company Secretaries in revival of the corporate world to come out of the dreadful Corona shock in light of the Aatma Nirbhar Bharat Abhiyan.

## 2. PRE-COVID-19 INDIAN ECONOMY

The World Bank’s Doing Business Report 2020 has ranked India at 63<sup>rd</sup> rank amongst some 190 economies. ‘Doing Business’ is a World Bank initiative that ranks several economies across the world based on 10 parameters. The rankings thus form a benchmark for comparing countries in terms of their respective government’s role in creating a healthy and conducive environment for businesses. With an aspiration to improve its position, the Government of India pioneered radical economic policy reforms which, *inter alia*, triggered with the onset of “Make in India” campaign in 2014, which was intended for facilitating investment, fostering innovation, building modern and efficient manufacturing infrastructure, making it easy to do business and enhancing skill development, creating an encouraging situation for attracting investment, opening up new sectors for foreign investment and form a partnership between government and industry through constructive state of mind thereby encouraging national and multi-national companies to manufacture their products in India and resultantly India achieved the rank of 63 in the DBR 2020. Thus, this was good news for India in pre-COVID-19 time. Nevertheless, the situation of Indian economy was precarious with slowing down GDP growth, rising unemployment, badly broken banking sector with high NPAs etc. The highlight of the state of Indian economy at the onslaught of COVID-19 in India can be portrayed as under:

➤ During the year 2019-20, Index of Eight Core Industries (i.e. Coal, Crude Oil, Natural Gas, Refinery Products, Fertilizers, Steel, Cement and Electricity) registered growth of 0.2 per cent which was 4.4% in 2018-19.

➤ Make in India - The initiative was launched in September, 2014 as a national effort towards making India an important investment destination and a global hub for manufacturing, design and innovation. The program is based on four pillars namely New Processes, New Infrastructure, New Sectors and New Mindset.

➤ The Start-up India Action Plan was launched on 16th January, 2016 with the objective of supporting entrepreneurs, building a robust start-up ecosystem, and transforming India into a country of job creators instead of job seekers.

➤ With a view to make India an increasingly attractive investment destination, important changes have been made in the FDI policy regime in recent times. Accordingly, Government of India has put in place a liberal policy on FDI, under which FDI, up to 100%, is permitted, under the automatic route, in most sectors/activities. The country has registered highest ever FDI Inflow of US \$ 62.00 billion during the financial year 2018-19. The FDI worth US\$ 284 billion has been received in last five years. FDI brings in resources, the latest technology and best practices to push economic growth on to a higher trajectory.

➤ The National IPR Policy ensures that India has a well established TRIPS- compliant legislative administrative and judicial framework to safeguard IPRs, which meets its international obligations while utilizing the flexibilities provided in the international regime to address its developmental concerns. It reiterates India's commitment to the Doha Development Agenda and the TRIPS agreement.<sup>3</sup>

➤ GDP- Amidst a weak environment for global manufacturing, trade and demand, the Indian economy slowed down with GDP growth moderating to 4.8 per cent in H1 of 2019-20, lower than 6.2 per cent in H2 of 2018-19. The World Economic Outlook Update of January 2020 has projected the growth of Indian economy to increase to 5.8 per cent in 2020

<sup>3</sup> Department for Promotion of Industry and Internal Trade, Ministry of Commerce & Industry, Government of India, Annual Report 2019-2020, pp. 4-26, available at [https://dipp.gov.in/sites/default/files/annualReport\\_English2019-20.pdf](https://dipp.gov.in/sites/default/files/annualReport_English2019-20.pdf) (last visited on March 18, 2020).

expecting India to contribute significantly to an eventual pickup in the growth of world output. India's GDP in nominal prices was ` 190.1 lakh crore (US\$ 2.7 trillion) in 2018-19. The Union Budget 2019- 20 had articulated the vision to make India a US\$ 5 trillion economy by 2024-25.

➤ Inflation- In H1 of 2019-20, CPI (Headline) inflation was estimated at 3.3 per cent, slightly higher than that in H2 of the previous year, which rose to 7.35 % in December 2019. The Wholesale Price Index (WPI) inflation, on the other hand, declined sharply from 3.2 per cent in April 2019 to 2.6 per cent in December 2019, reflecting weakening of demand pressure in the economy.<sup>4</sup>

➤ Exports-Imports - For the period 2019-20 (Apr-Dec), Export was Rs. 16,84,559 Crore, Import was Rs. 2514784 Crore, thus creating a Trade deficit of Rs. -830225.<sup>5</sup>



Figure 1. Status of pre-COVID-19 Indian economy. Author's compilation

<sup>4</sup> Economic Survey 2019-20 Volume 2, Ministry of Finance, Government of India, pp. 1-7 available at <https://www.indiabudget.gov.in/economicssurvey> (last visited on April 16, 2020).

<sup>5</sup> Economic Survey 2019-20 Statistical Appendix, p. 103 available at <https://www.indiabudget.gov.in/economicssurveydoc/Statistical-Appendix-in-English.pdf> (last visited on April 16, 2020).

Thus, the COVID-19 crisis has appeared in India when the situation of Indian economy was in a bit precarious state. India's GDP growth was already slowing down, and unemployment was on the rise owing to poor economic performance over the last several years. And since the financial sector is also not performing satisfactorily, the situation is likely to be more fragile. It is in this backdrop that the Government of India in May 2020 announced a special economic package of Rs 20 lakh crore (equivalent to 10% of India's GDP) with a view not only to make the country independent against the harsh rivalry in the global supply chain but also to help in empowering the cross sections of society and also the poor, labourers, migrants who have been terribly and adversely affected by COVID-19 catastrophe. The package is intended to make India a self-reliant nation; hence the same appears to have been aptly named as the "Aatma Nirbhar Bharat Abhiyan (ANBA)." The ANBA (Self-reliant India Campaign) would be based on five pillars – an ECONOMY that takes quantum jumps, not incremental gains; modern INFRASTRUCTURE; a technology-driven SYSTEM; VIBRANT DEMOGRAPHY; and a DEMAND and supply chain.



Figure 2. Pillars of Aatma Nirbhar Bharat Abhiyan. Author's compilation.

## 2. PROPOSED REFORMS UNDER THE AATMA NIRBHAR BHARAT ABHIYAN

The principle measures proposed under the said economic package are briefly summarised herein below:

### (I) GOVERNMENT REFORMS

➤ Proposed to increase the borrowing limits of state governments from 3% to 5% of Gross State Domestic Product (GSDP) for the year 2020-21.

➤ Policy to Privatised some Public Sector Enterprises.

### (II) Measures for Business/MSMEs

➤ Collateral free automatic loans of up to three lakh crore rupees,

➤ To provide equity funding for MSMEs, a fund of funds with a corpus of Rs 10,000 crore will be set up,

➤ Promoters of stressed MSMEs having NPAs will be given debt from the banks under the Subordinate debt Scheme which will be infused into the MSMEs as equity,

➤ Under a Special Liquidity Scheme Rs 30,000 crore of investment will be made by the government in investment grade debt paper of Non-Banking Financial Companies (NBFCs)/Housing Finance Companies (HFCs)/Micro Finance Institutions (MFIs).

➤ Through the PM Garib Kalyan Yojana, the government paid 12% of employer and 12% of employee contribution into the EPF accounts of eligible establishments for the months of March, April and May, and it is planned to continue the same for the months of June, July & August 2020. Further, the Statutory PF contribution of both the employer and employee is planned to be reduced from 12% to 10% each for all establishments covered by EPFO for next three months.

➤ It is proposed to provide bank credit to Street vendors for an initial working capital of up to Rs 10,000.

➤ Payments due from the Government and CPSEs to MSMEs are proposed to be released within 45 days. Insolvency resolution framework especially for MSMEs under the Insolvency and Bankruptcy Code, 2016 is proposed to be notified.

➤ For the period starting from 14/05/2020 to 31/03/2021, the rates of Tax Deduction at Source (TDS) for the non-salaried specified payments made to residents and Tax Collected at Source (TCS) will be reduced by 25% from the existing rates.

➤ With a view to facilitate the ease of doing business, direct listing of securities by Indian public companies in permissible foreign jurisdictions will be allowed.

➤ On Legislative reforms side, the Investment & Turnover limits determining the MSMEs, minimum threshold limit to initiate insolvency proceedings under the IBC will be

increased. Similarly, certain offences under the Companies Act, 2013 will be decriminalized.

### (III) AGRICULTURE AND ALLIED SECTORS

➤ Scheme to cover through Kisan Credit Cards around 2.5 crore farmers with concessional credit worth two lakh crore rupees. A fund of One lakh crore rupees for development of agriculture infrastructure projects at farm-gate (market where buyers can buy products directly from the farmers) and aggregation points (such as cooperative societies and Farmer Producer Organizations). An additional fund of Rs 30,000 crore as emergency working capital for farmers to be disbursed through NABARD.

➤ The Pradhan Mantri Matsya Sampada Yojana (PMMSY) worth Rs. 20,000 Crore for integrated, sustainable, and inclusive development of marine and inland fisheries.

➤ Rs 15,000 crore as Animal Husbandry Infrastructure Development Fund for supporting private investment in dairy processing, value addition, and cattle feed infrastructure.

➤ Plans worth Rs 6,000 crore to facilitate job creation for tribals and adivasis through afforestation and plantation works under the Compensatory Afforestation Management and Planning Authority (CAMPA).

### (IV) MIGRANT WORKERS

➤ One Nation One Card Scheme enabling migrant workers to access the PDS anywhere in India, Rs. 3500 Crore scheme to provide free food grains to migrant workers & the migrant labour/urban poor will be provided living facilities at affordable rent under Pradhan Mantri Awas Yojana (PMAY).

### (V) CIVIL AVIATION

➤ Investment of Rs. 13,000 Crore through PPP model to built world-class airports. Efficient airspace management to savers 1000 Crore annually.

### (VI) DEFENCE

➤ Promotion of Make in India initiative in the defence sector to make the country independent in terms of production.

### (VII) ENERGY

➤ A liquidity support of Rs 90,000 crore will be provided to power distribution companies. Rs 50,000 crore planned to be spent

on infrastructure development for evacuation of coal.

### (VIII) HOUSING

➤ An investment of over Rs 70,000 crore in the housing sector through the Credit Linked Subsidy Scheme for Middle Income Group (annual income between Rs 6 lakh and Rs 18 lakh) as extended by one year up to March 2021. COVID-19 to be treated as "Force Majeure" under Real Estate Regulatory Authority (RERA).

### (IX) SOCIAL SECTOR

➤ The investment in public health will be increased. To help boost rural economy, an additional Rs 40,000 crore will be allocated under MGNREGS. Rs. 8100 crore expense is estimated on developing social infrastructure. PM eVidya will be launched for multi-mode access to digital/online education.

### (X) KEY RBI MEASURES

The package is inclusive of the following RBI measures already announced:

➤ Reduction in Cash Reserve Ratio (CRR) resulting in liquidity support of Rs 1,37,000 crore. Increase in Banks' limits for borrowing under the marginal standing facility (MSF) enabling banks to avail additional Rs 1,37,000 crore of liquidity at reduced MSF rate. Proposed planned Investment in investment grade bonds, commercial paper, non-convertible debentures including those of NBFCs and MFIs to the tune of Rs 1,50,050 crore of Targeted Long Term Repo Operations (TLTRO).

➤ Special Liquidity Facility (SLF) of Rs 50,000 crore for mutual funds as liquidity support. Special refinance facilities worth Rs 50,000 crore for NABARD, SIDBI and NHB at policy repo rate. A moratorium of three months has been provided on payment of instalments and interest on working capital facilities for all types of loans.<sup>6</sup>

Thus, not less than Rs. 20 lakh crore package has been announced as stated above, which is tabulated as under:

<sup>6</sup> Summary of announcements: Aatma Nirbhar Bharat Abhiyan, PRS Legislative Research, pp. 1-6, available at [www.https://prsindia.org/sites/default/files/parliament\\_or\\_policy\\_pdfs/Summary%20of%20Aatma%20Nirbhar%20Bharat%20Abhiyaan.pdf](https://prsindia.org/sites/default/files/parliament_or_policy_pdfs/Summary%20of%20Aatma%20Nirbhar%20Bharat%20Abhiyaan.pdf) (Last visited on June 18, 2020).

Sr. No.	Item	Amount (Rs. Crore)
1	Stimulus from earlier measures	1,92,800
2	Stimulus in Part 1	5,94,550
3	Stimulus in Part 2	3,10,000
4	Stimulus in Part 3	1,50,000
5	Stimulus in Part 4 & 5	48,100
6	Sub Total	12,95,450
7	RBI Measures (Actual)	8,01,603
8	Grand Total	20,97,053

Table 1. Aatma Nirbhar Bharat Abhiyan package. Data source- PRS Legislative Research.



Figure 3. Aatma Nirbhar Bharat Abhiyan package. Author's compilation. Data Source- PRS Legislative Research.

### 3. ROLE OF COMPANY SECRETARY

As such each and every person is an important role-player against the COVID-19 threat, none can take the slightest thing loosely, and then only together we will be able to win against this deadly corona attack and reposition our country. Nevertheless, especially in tune with the policy to execute the spirit of the Aatma Nirbhar Bharat Abhiyan, in an organisational context, perhaps, because of a company secretary's key functional and statutory position, i.e a link between the Board and the employees and other stakeholders, his role assumes a specific importance. He should act as a front runner in interpreting the government directives for compliance and facilitate the related compliances by Board members, fellow employees etc. This may include steps like how to do work from home, how to be safe by using masks, maintain personal hygiene and fitness, how to maintain social distancing and lockdown, how and from where to get relevant directions/orders from government departments, guiding how to keep the family members of all the employees safe and directing them also to adhere to the various precautionary measures. In the case of illness if any reported,

how and where to contact promptly for medical treatment and maintaining the requisite protocol given by the medical experts. In the time of lockdown channelizing above activities from home and ensuring welfare of all concerned will be an added success of CS. The ultimate result of such disciplined adherence will be that all the staff members will be safe, the company may not have a COVID-19 case, and this in itself is a great contribution to the nation in this dire time. Further at the domestic company level, the post-COVID-19 business situation- particularly after the announcement of the Aatma Nirbhar Bharat Abhiyan- will demand renegotiation with bankers, contractors, stakeholders, suppliers, customers etc. on varied issues focused on rebuilding and re-establishing the business cycle. His skills will be of immense help at that time, which may include but not limited to the following attributes:

- Economic slowdown, at present, is a global phenomenon. CS can play a vital role in a round of re-negotiation with contractors, bankers, suppliers, customers and other related stakeholders with his smart liaising skills to arrive at a win-win situation for all the parties and regularise the business accordingly.
- The ANBA package includes stimulus for Businesses including MSMEs, Agriculture sector including allied associated occupations like animal husbandry, herbal cultivation, bee keeping, fisheries as well as marketing of their produce. CS can advise the potential MSME-promoters to select a viable form of business enterprise to do business in their core areas of expertise and leave the rest of the things on his consultancy service like negotiation with bankers for loans, the varied/necessary registration requirements, human resource management, taxation matters, litigation matters, drafting various contracts / documents.
- On freelance scale the beneficiaries of the ANBA can avail services of a PCS for documentation for availing various benefits of the ANBA.
- Services of a PCS can be availed in relation to RERA matters.
- Protection and security of the company's data in fast changing technology regime is also an important role of CS. He should secure the client's data from Phishing, Hacking, Malware attacks etc. with the help of experts and thus avoid the potential threat and damage.
- Protection of IPR is also important role.
- During COVID-19 Lockdown, labourers have gone to their villages. There is total

disturbance of labour supply in the cities. Through CSR, jobs can also be created in rural India to help, relocate these poor migrants. CS can think and get directed the company policies in this direction advising the Board in this respect.

➤ At present self-reliance is thought of producing our products but over a longer time it is needed to produce at a scale that the same can be exported so that foreign exchange can be generated, hence it is said that ***“time has come to become vocal for our local products and make them global.”*** Thus the role of CS particularly in relation to ANBA is that of a guardian of governance for the concerned organisation, a forward looking proxy advisor, interacting with stakeholders in a strategic way and possessing a wider understanding of business and economic context in which business organisations work particularly in the post-COVID-19 era.

#### 4. CONCLUSION

Thus, the Aatma Nirbhar Bharat Abhiyan Policy reacts to the COVID-19 generated economic pain, essentially targets avoiding unemployment becoming hunger and liquidity becoming insolvency. It covers Agriculture package, Non-banking liquidity package for MSMEs, NBFCs MFIs, Housing finance companies, Power dis-coms & others. ANBA is neither just a fiscal bonfire nor an institutional assault or mindless public sector expansion but is targeted to create new openness to ideas, investment, and trade. ANBA is about the opening of the economy. Through Make in India, India can become a global power through economies of scale as well as quality. This will stop many unnecessary imports. The current post-COVID 19 situation demands added focus on governance due to increasing shareholders' and stakeholders' expectations, circumstances forcing to replicate varied views before the Board, which has brought a drastic change in the role and responsibility of Company Secretaries. Now CS has to ensure that the Board is given the proper advice and resources, in compliance with the

ANBA policy, to discharge its fiduciary duties towards the stakeholders. Minute understanding of business strategies, risk exposures, synergic approach while collaborating and working with various agencies and stakeholders to arrive at a win-win conclusion on various business issues. Business acumen, Diplomacy, Motivational skills, Integrity to organisation, Proactive, Adaptability, Strategic thinking, Emotional Intelligence, Liaising skills etc. to name a few attributes will be the need of the time to effectively serve the corporate.

Thus having traditionally been proved as 'eyes and ears' of the board and a conscience keeper of the company, a company secretary now will have to play a critical and pivotal role in maintaining governance standards of the company and aptly prove as Chief Governance Officer in the post-COVID 19 era driven by Aatma Nirbhar Bharat Abhiyan spirit.

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#### References

1. Department for Promotion of Industry and Internal Trade, Ministry of Commerce & Industry, Government of India, Annual Report 2019-2020, pp. 4-26, available at [https://dipp.gov.in/sites/default/files/annualReport\\_English2019-20.pdf](https://dipp.gov.in/sites/default/files/annualReport_English2019-20.pdf) (last visited on March 18, 2020).
2. Economic Survey 2019-20 Volume 2, Ministry of Finance, Government of India, pp. 1-7 available at <https://www.indiabudget.gov.in/economicssurvey> (last visited on April 16, 2020).
3. Economic Survey 2019-20 Statistical Appendix, p. 103 available at <https://www.indiabudget.gov.in/economicssurvey/docs/Statistical-Appendix-in-English.pdf> (last visited on April 16, 2020).
4. <https://time.com/5818819/imf-coronavirus-economic-collapse/> (Last visited on April 20, 2020)
5. Summary of announcements: Aatma Nirbhar Bharat Abhiyan, PRS Legislative Research, pp. 1-6, available at [www.https://prsindia.org/sites/default/files/parliament\\_or\\_policy\\_pdfs/Summary%20of%20Aatma%20Nirbhar%20Bharat%20Abhiyaan.pdf](https://prsindia.org/sites/default/files/parliament_or_policy_pdfs/Summary%20of%20Aatma%20Nirbhar%20Bharat%20Abhiyaan.pdf) (Last visited on June 18, 2020)

## ROLE OF COMPANY SECRETARY AND AATMA NIRBHAR BHARAT ABHIYAN (ANBA)



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Recently Honorable Prime Minister of India Shri Narendra Modi announced an Economic Package of Rs 20 Lakh crores along with a Premier Scheme of making India “Atma Nirbhar Bharat” i.e. a Self Reliant India. Prime Minister laid down that “India’s self-reliance will be based on five pillars — Economy, Infrastructure, Technology driven system, vibrant Demography and Demand. The Government’s objective is turning Indian economy from “command and control” towards “plug and play”.

The Honorable Prime minister also conveyed that the objective can be achieved with active participation of each and every citizen of India. COVID 19 or Corona Virus has had devastating effect on humans, economy, and the business atmosphere. It has dealt a deadly blow to many nations including India. Many have lost their lives; many are without the bread winners; many have had to relocate and leave their place of work. It was as if the entire world has suddenly stopped and the wheels of life has abruptly slowed down to a grinding halt.

Governments all over the world were grappling with difficult situations which were growing slowly and steadily. Industries were slowly shutting down, people were falling sick and there was a fear psychosis among all. The Indian Government moved steadfast to arrest the damage and declared complete “Lockdown” w.e.f 24<sup>th</sup> March, 2020. The same was extended further based on the situation.

However, the Lockdown had a cascading effect. Without production/ manufacturing activity and with no manpower in hand, Industries had to work with bare minimum strength/ abilities. With demand drying out, sales were severely affected. With dwindling revenues, Industries were short of rolling cash. Many Industries

reported losses day in and day out. This also affected their ability to maintain the labor force and pay their salaries. Mirroring the losses, were the lower tax collections for Government. Consequently, there was a demand/ need for supporting Industries and the downtrodden who are the backbone of economy.

It is in these circumstances, Honorable Prime minister of India and the Honorable Finance Minister announced a detailed economic package of Rs 20 Lakh crore to support various sectors of economy as also flagship scheme “Atma Nirbhar Bharat Abhiyan”.

- The various reforms initiated under the program are expected to attract new investments and Promote business.
- Improve supply chain and make businesses more robust to face competition
- Increase efficiency and ensure better quality outputs.

Now the focus shifted to each and every citizen as to how one can effectively contribute towards making the Abhiyan a grand success. Be it a Worker at the Plant, an Executive, a Director on the Board, a Doctor, Para Medical Staff, an Army General, a Professional like Company Secretary, each one has a specified role to play in the National building exercise.

### **LET US NOW FOCUS ON THE ROLE OF COMPANY SECRETARY.**

A Company Secretary plays a Pivotal Role in smooth functioning of any Company. A Company Secretary is not just leading a Department in a Company but is a guiding force to the Company’s Board, its Management, Employees and the Regulatory Authorities. Without a Company Secretary, the Company would be scrambling for ideas and modalities, non-compliances of various rules and regulations and all this would

result in operational inefficiencies and consequent penalties.

Covid-19 situation brought in a tremendous change in the path of prudent business management. Focus shifted to "Online Systems" and "Work from Home" concept wherein Business Owners, Employees, Regulatory authorities adopted the culture of managing their operations through Electronic mode instead of Physical mode. Social distancing became a well laid down norm. Human contact has been almost totally eliminated with people interacting through Mobiles, Laptops and Personal Computers.

Like everyone, for Company Secretary it resulted in a complete transformation in their operational set-up. Instead of relying on physical documents, a Company Secretary has now to focus on exchange of Electronic Data. They have to be more careful in ensuring data protection, transmission and transformation as they are one of the main sources towards ultimate decision-making authority in a Company, being the Board of Directors.

Each Company Secretary's focus is also now directed towards supporting the Government in their objective of "Ease of doing Business in India and making India safe and Self Reliant INDIA".

## **ROLE OF COMPANY SECRETARY IN NATION BUILDING EXERCISE:**

❖ Various Departments of Governments and the Ministry of Corporate Affairs (MCA) have been issuing circulars and notifications to mitigate hardships to companies in warding off the unprecedented situations. The Government has also allocated finances to support various sectors of economy and give a boost to it. A Company Secretary has to constantly keep his ears and eyes open and keep himself /herself abreast with all periodical changes being effected having serious implications on business operations.

❖ The Company Secretary needs to study, understand and decimate the information to all stakeholders. It is a duty cast on the Company Secretary to interpret the implications of each and every norms, rules and regulations and ensure its implementation in proper prospective. Various initiatives undertaken by the Government need to be conveyed to the ultimate beneficiaries and the Company Secretary, being the person equipped with

capabilities to understand, interpret, convey and convince has to play a pivotal role in sharing the information to the ultimate beneficiaries. All benefits and intentions of the Government behind each initiative, laws, rules and regulations need to be understood and transmitted in proper prospective.

❖ There has also arisen the need for every Company to revisit their risk management policies with rapid adoption of the digital technology. This will enforce the need for redrawing business strategies, procedures and the way information is stored, transmitted and utilized. The Company Secretary needs to constantly and closely work with the company's IT Department for ensuring Cyber protections and data management. The Company Secretary needs to co-ordinate with all users and be alert in informing about any suspicious or hacking attempts by elements working both in the Country and abroad. The Company Secretary not only has to liaison with his Company's own departments but also with Government Cyber protection agencies in alerting them in case of any suspicious moves having detrimental impact on the nation's cyber security.

❖ One important move of the Government is fast tracking investment to pave way towards Aatma Nirbhar Bharat. The Government has drawn a detailed road map to attract Investments into India, simplifying procedures and making India an attractive Investment destination. Company Secretaries being torch bearers have to support the initiatives of the Government in letter and spirit. Being advisors to many Institutions, High Net worth Individuals, Foreign Portfolio Investors and Industrialists, Company Secretary needs to effectively transmit and spread the positive initiatives through all their modes of communication. Foreign Investors needs to know the benefits of making Investments in India. They need to be fearless and feel comfortable that they will not have any impediments in Investing and repatriation of funds to and from India. The initial fear of Governments agencies interference and harassments has now become a thing of the past and India has now transformed over the years to become one of the finest Global destinations with complete transparency with minimum Government interventions. These facts need to be placed in proper perspective by the Company Secretary who deal with Government Departments and Agencies day in and day out. Being a Member of a Premier Professional Body, the Company Secretary needs to promote, pursue and ensure that Investment flows into

India and our Country and its people reap the benefits of transfer of Technology in each sphere of Economy.

❖ The Covid situation has drawn everyone's attention to concentrate and evolve Health reforms and to protect men and lives. It has resulted in new initiative investments in public health and to prepare the nation for future pandemics. Indian Doctors and Para Medical Staffs have done a commendable work par excellence. There has also arisen the need to insure each and every life and the Government has made it mandatory for Companies to extend health Insurance for all. Being Company Secretary, it is his/her duty to take the requirements to the Company Management, to select the best possible cover for the employees and their families. The Company Secretary should educate the employees about basic Hygiene and need for wearing protective gears which are aimed at giving the much needed security against transmission of any disease. The Company Secretary also needs to send valuable recommendations to the Government agencies for improvements in Health Cover norms and Techniques and extend all support to the Government in their effort to protect valuable lives and curtail spreading of the pandemic. The Company Secretary also need to publicize the hospital and testing/ medical facilities available so that people can take maximum benefits in the hour of need. Aarogya Setu Application needs to be installed by each and every one on their Cell Phones, and has premier features in giving vital information of Covid-19 pandemic.

❖ One of significant objective of the Atmanirbhar Bharat Abhiyan is to increase manufacturing in India , enhance Exports, reduce Imports and be Self Reliant. Substitution of Imported goods with Indian Products and adopting "Swadesi" culture should be the motto of each and every Indian. The Government has initiated positive steps, has eased tax laws, simplified compliances to make the atmosphere conducive for Industrialization to grow. Further, various sectors which were earmarked for Public Sectors have been deregulated and opened up for Private Sector participation. The scope and definition of Small and Medium Scale Industries have been widened and various incentives and financial packages have been announced to promote their progress. As a Company Secretary and responsible citizen, he/she should strive and aid the Industrialization process and advice the businessmen the need to adopt local products and materials in their manufacturing, reduce

dependence on Imports , enhance Exports and take advantage of the liberalization initiatives. The Company Secretary also needs to propagate and adopt Indigenous products in their day to day life and educate their family and their Children to "Be Indian and Buy Indian". The Company

Secretary should also inculcate amongst the youngsters the need and urge for making a Vibrant India through hard work, dedication and knowledge application.

❖ Another Important initiative is the concept of "One Nation One Market" objective. This has opened up wide opportunities for marketing of agricultural produce. This is also aimed at making India become the food factory of the world. Till now farmers and agriculturists were dependent on Marketing Federations and middlemen to market and sell their products. By eliminating the middlemen, now the farmers are at liberty to sell their output to anyone. The Government has also important role in determining the minimum price so that the farmers are not put to loss and difficulties. Company Secretaries, who are spread across the country and in various industries including Agri Products have to bring this to the notice of farmers , traders and monitor that there is no exploitation and the tiller of land is rewarded for his sweat and hard work.

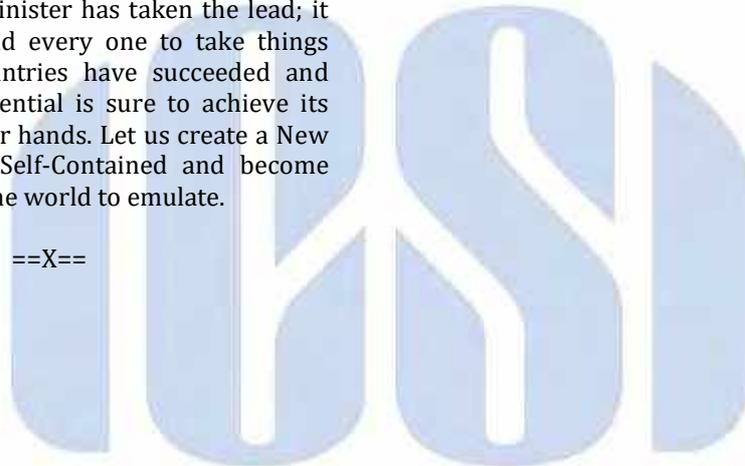
❖ The newly launched PM e-Vidya programme for multi-mode access to digital online education is a unique initiative for On Line Learning. This will enable schools and universities to stream courses online without further loss of teaching hours. This has also opened up new opportunities in Education Sector and new Initiatives will be seen in this sector very soon. India is the ocean of Knowledge and the On-Line education provides Knowledge sharing right from Kindergarten Schools till Postgraduate and Professional Studies. Company Secretaries have an important role to play in this initiative and promote Indian knowledge base across the World. The world should know about the immense Indian potential which has no dearth.

❖ In conclusion the Company Secretary has to adopt the motto of "RAPID", i.e.  
R- Receive Information  
A- Analyze Information  
P- Process Information  
I-Implement Information  
D-Decimate and circulate  
Information amongst all stake holders.

The above are some of the vital tools for a Company Secretary in their effort to promote “Atma Nirbhar Bharat” Abhiyan. Company Secretary has a vital role in Nation Building. Covid-19 has put additional responsibilities which each and every Company Secretary has to shoulder. “Atma Nirbhar Bharat” is a dream for every Indian Citizen to accomplish. The profession of Company Secretary has never lagged behind in accepting challenges and has been immensely supporting the Government in all their initiatives. Company Secretary, whether in employment or in Practice has always put the national interest in the forefront and will continue to contribute with their entire ability, energy and might to make “**ATMA NIRBHAR BHARAT ABYAN**” a Grand Success.

Let us all work together, let us all pull all our threads, let us all be united in making India Vibrant and Self Reliant. Our efforts will have vital impact on our future Generations. Our Honorable Prime Minister has taken the lead; it is now for each and every one to take things forward. Many countries have succeeded and India with vast potential is sure to achieve its goal. Future is in our hands. Let us create a New India, Self-Reliant, Self-Contained and become No 01 Country for the world to emulate.

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## ATMA NIRBHAR BHARAT ABHIYAN (ANBA) AND ROLE OF COMPANY SECRETARY



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### BACKGROUND: -

The COVID-19 (Corona Virus Disease, 19) outbreak in India as well as in almost entire world has made life of people in the affected countries miserable. To restrain the spread of COVID-19, lockdown was imposed in India as well in other countries, in India the lockdown was imposed in the month of March 2020 and continued in four phases which has brought small and medium-sized businesses to a standstill as social distancing is held to be a serious pre-requisite of continuing business operation. In turn this lockdown in India has affected seriously the economy and supply chain management, and further necessitating the Central Government to come to rescue the economy of India as well as the business reorganisation.

### ATMA NIRBHAR BHARAT ABHIYAN: MEANS FOR SMES TO BECOME SELF-RELIANT:

Each benefit under the ANBA is going to help Indian manufacturers to continue business and sustain their logistics supply chain. India is a known net importer, implying that its imports exceed its exports

Even though MSMEs have been significantly contributing towards India's GDP and employment growth rate, they are suffering a great deal due to the government's preventive measures to fight with the novel coronavirus. So, in order to bring the sector back to where it was, *Honourable Prime Minister Shri. Narendra Modi* has recently announced a campaign called

Atma-Nirbhar Bharat Abhiyan (ANBA) and brought MSMEs under its scope. The ANBA Programme is mainly introduced for a self-reliant India which shall stand on the five pillars of the following:

- a. Economy,
- b. Infrastructure,
- c. Technology,
- d. Demand, and
- e. a Vibrant Demography.

Following this announcement by Hon. Prime Minister, the Finance Minister had announced four tranches for implementation of the programme.

1. First tranche has contained 16 specific announcements spanning across MSME, NBFC, real estate, power sectors, etc.
2. The second tranche focuses on providing free food grains to migrant workers who do not possess ration cards.
3. The third tranche of the economic relief package focuses on agricultural marketing reforms.
4. The final tranche focuses on the sectors of defense, aviation, power, mineral, atomic and space.

### INDIA'S PATH TO SELF-RELIANCE:

A key take-away from the announcement by the Honourable Prime Minister is that the Atma Nirbhar Bharat Abhiyan is a framework for building a self-reliant India, which would be competitive globally. It is also looking to strengthening local manufacturing, building local supply chains, and converting local products into global brands.

Indian start-ups and innovators will play a vital role in the success of the mission. The Atma Nirbhar Bharat Abhiyan is a chance for Indian start-ups to take charge of the innovations for which we are usually dependent on global suppliers. They can lead the way by innovating and bringing to market products and services that are world-class yet affordable. They are quick to spot opportunities in adversities and innovate in limited time and budget to make competitive products. Start-ups in sectors like automation, fin-tech, supply chain, logistics, healthcare, etc. would lead the charge in the mission.

### **ATMA-NIRBHAR BHARAT ABHIYAN (ANBA) WILL SAVE THE MSMEs: IN THE FOLLOWING WAYS :**

Under Atma-Nirbhar Bharat Abhiyan (ANBA), the government will offer INR 3 Lakhs Crores as security free programmed credit to MSMEs with outstanding loans of INR 25 Crores or yearly turnover of INR 100 Crores. An extra measure of INR 20K Crores has additionally been reserved to be utilized for small and medium-sized businesses.

This is going to profit a lot of businesses, including the automobile industry as most auto part creators are a part of this sector. Other than this, the government has likewise limited the difference between manufacturing and service businesses and has broadened the extent of small, medium, and large-scale businesses.

Each benefit under the ANBA is going to help Indian manufacturers continue business and sustain their logistics supply chain. This will likewise assist organizations with raising their self-reliance by requiring less from other countries.

The government has additionally reported a few measures to increase the flow of money in the market, equity infusion of INR 50K Crores in the market, and a 25% decrease in taxes until March 2021. In times like these, where the simple survival of the MSME segment is in question, ANBA means to address the necessities of these businesses and gives a direction for their long run manageability and productivity.

Survival in the New Atmanirbhar India: It involves –

#### **1. CONTACTLESS DELIVERY: -**

The coronavirus outbreak has made social distancing a serious pre-requisite of continuing

business operations; making contactless delivery of products the new normal. Since the lockdown, cash-on-delivery orders have gone down across industries and have been replaced by online transactions or virtual payment applications (such as credit cards and UPI transactions). This could give a boost to domestic financial-tech companies offering several payment solutions customized as per the emerging needs.

With more buyers moving towards online shopping for their essential needs, last-mile delivery services would need to step up to provide better delivery performance. Some of the known logistics solution providers such as Pickrr are now using OTP for delivery confirmations and cancellations while others are using GPS to track delivery personnel's location. Newer technologies such as smart proximity check & authentication might be the answer to an age-old problem of fake comments by ground staff.

#### **2. SUPPLY CHAIN LOGISTICS: -**

India is a known net importer, implying that its imports exceed its exports. While India's local logistics network is quite strong, to substitute its primary reliance on foreign countries, tech-abundant Indian aggregators must come together to ensure a faster and wider reach. This could be done when the self-reliant logistics platforms such as Pickrr and Ship-rocket take charge and virtually consolidate local logistics market-players to bring them under one roof.

This will empower the domestic companies; increase the demand within the home market; encourage mass-scale employment, and eventually lead to economies of scale. It will also open investment opportunities for adaptable and technology-enabled Indian logistics companies.

The idea behind Atma-Nirbhar Bharat Abhiyan (ANBA) is to make SMEs more capable and competent, letting them take charge of innovations for which they were conventionally dependent on MNCs. To facilitate smooth operations within their limited size and lean operations, logistics partners will play a great role in providing nationwide serviceability and technical innovation that could lessen their manpower dependency.

## **BENEFITS AND EXEMPTIONS PROVIDED BY THE GOVERNMENT OF INDIA UNDER ATMANIRBHAR BHARAT SCHEME: -**

Amid the global crisis that COVID-19 has posed, the economy has been to a lot of leaps and bounces. The GDP growth rate dipped to as low as 1.2% for the financial year 2020 – 2021. In an attempt to stabilize the Indian economy alongside safeguarding the interests of the needy, as stated earlier the Minister of Finance, Nirmala Sitaraman laid down the plan for Atmanirbhar Bharat Abhiyan or Self-Reliant India movement (“**ATMANIRBHAR BHARAT SCHEME**”). The detailed breakup of the Atmanirbhar Bharat Scheme came a day after Prime Minister Narendra Modi announced a social and economic comprehensive package of INR 20 Lakhs Crores to curb the current economic situation of the nation. This package will cater the needs of various sections including but not limited to cottage industry, MSME's, laborers, industries etc.

The reforms declared under the 5 Pillars of the ANBA Programme are the efforts to make the nation self-reliant and independent. Some of the key relaxations and benefits announced in the speech of the Finance Minister are as follows:

1. Pradhan Mantri Garib Kalyan Package
2. Measures by Reserve Bank of India
3. Measures for Businesses including MSMEs
4. EPF Support for Business & Workers
5. Relief to Contractors
6. Tax related Measures
7. Measures related to Companies
8. Measures related to NBFCs/HFCs/MFIs

The ANBA programme has made all the stakeholders to redefine their objectives and accordingly plan the activities that will make them to survive in present circumstances.

The programme has also compelled all employers / entrepreneurs to redefine their business objectives, and accordingly take the opportunities which has been made available to them through this ANBA Programme by the Central Government.

## **ROLE OF COMPANY SECRETARY IN THIS ANBA: -**

A Company Secretary is required to have a good level knowledge of the scheme of ANBA before he / she ventures into giving any professional services to his / her client. Further any scheme which is declared by the Central Government for any type of benefits, it is backed by certain pre-

determined obligations for the stakeholders to comply within the time allotted. In this sense the professional's role comes into picture as the stakeholders will have to understand the scheme perfectly and accordingly as per the advice of the Company Secretary to comply with conditions attached to the scheme.

This is the testing & challenging time for all stakeholders i.e. for the employers, employees, consumers, Governments, suppliers, manufacturers, service providers, professionals whatever may be the category of the individuals. However, the professionals like Company Secretary can help the *stakeholders* with his / her expert knowledge and skill set in right direction & perspective: -

1. Interpret the correct & clear meaning of the clauses of the ANBA Scheme so that they take the benefit of the scheme and comply with the requirement of the scheme.

## **2. ACT AS CONSULTANT IN -**

- a. Incorporation of MSME sector companies.
- b. Incorporation of Start-up companies / LLP / Partnership Firm
- c. Listing Requirements for MSME sector companies, if such companies fulfill the criteria of listing.
- c. Reorganisation of business plan & supply-chain functions.

## **3. ADVISE ON THE MATTERS RELATED WITH**

- a. Taxation like reduction in the rate of TDS (Tax Deducted at Source) & TCS (Tax Collected at Source) and the quarterly Returns filing of them to the NSDL for further submission to Income Tax Department.

- b. Availability of loans for those which could not carry out their business activities due to complete locked down subject to the conditions of individual banks which will entertain such loan application.

- c. Availability of Loans under CGTMSE (Credit Guarantee-Fund Trust for Micro & Small Enterprises) to the MSME Sector Enterprises without collateral securities subject to fulfillment of criteria of individual banks.

**4. COMPLY WITH THE RULES & REGULATIONS OF THE VARIOUS STATUTES LIKE -**

a. Returns as required under Companies Act, 2013 and the Rules made thereunder.

b. Returns of TDS / TCS under Income Tax Act, 1961 and Rules made thereunder.

c. Listing Requirements as per SEBI's (Listing Obligations & Disclosure Requirements) Rules as amended from time to time.

d. Returns as required under GST Act, 2017 and the Rules made thereunder.

5. Mentor for carrying of Social Obligations like Corporate Social Responsibilities as defined under Section 135 of Companies Act, 2013 for those Corporate Clients to whom this Section is applicable.

6. Advise on the matters related with Labour Laws i.e. PF related Rules with clear meaning of the scheme during the COVID-19 period for the benefit of those concerned.

7. Act as guiding force / path finder to the stakeholder in finding out the right course of action before restarting the business activities by helping to plan their business activities post COVID period.

8. Help to remain & sustain in the business as well as grab the available opportunity in business, grow & achieve the profitability in the business thereby to earn their livelihood for the life.

9. Remain competitive in business by cutting down unnecessary costs.

**CONCLUSION: -**

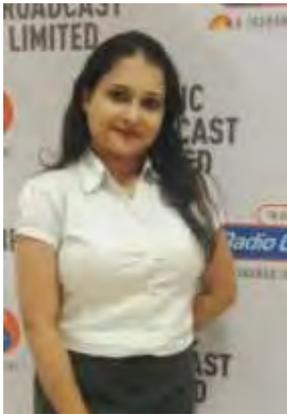
Central Government has stressed more importance of MSME Sector Entities in ANBA Scheme as the most preferred sector as the growth of this sector will pave the way for economic development of India in near future and which will further enable to move towards Self-Reliant Economy in the years to come.

Company Secretary acts as a regular facilitator between the Management of the Company, and Investors, Consumers, Labour and Statutory Authorities i.e. all the stakeholders. With the expert knowledge of subjects like Finance, Accounts, Taxation, Costing, Corporate Laws, Labour Laws, etc. And with available skills of negotiation, and the anticipated results of the

ANBA Scheme by Central Government, it is expected from the Company Secretary to correctly interpret the various clauses of the ANBA Programme, deliver the desired results to the stakeholders in right perspective.

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## ROLE OF COMPANY SECRETARY AND AATMA NIRBHAR BHARAT ABHIYAN (ANBA)



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As it is rightly quoted,

*“Necessity is the mother of all inventions”*

While the economic growth of the country dipped significantly due to sudden outbreak of dreadful pandemic worldwide, acute recession gripped its claws firmly on the entire global economy. Amidst rare unimaginable pandemic **Covid-19** situation where the entire world has observed lockdowns and international trade has come to stand still for almost a quarter, India, in an attempt to bring it's shaken economy back on track, crafted a vision to build a self-reliant India termed as “AATMA NIRBHAR BHARAT ABHIYAN” or “**SELF-RELIANT INDIA**”.

One of the core motives behind Aatma Nirbhar Bharat Abhiyan (**ANBA**) is to make MSMEs more capable and competent, letting them take charge of innovations for which they were conventionally dependent on MNCs. It is rightly said, innovation is an inexhaustible engine for economic growth. Even though MSMEs have been significantly contributing towards India's GDP and have successfully shot up employment growth rate, they are suffering a great deal due to the government's preventive measures to fight with the novel coronavirus. Hence it became necessary for developing economy like India to overcome this fatal crisis by being independent and self reliant, with introduction of “**Aatma Nirbhar Bharat Abhiyan (ANBA)**”

An **atmanirbhar** (self-reliant) India is envisioned to be built on five pillars namely,

- i. Economy,
- ii. Infrastructure,
- iii. A system driven by technology and forward-looking policies,
- iv. Demography, and
- v. Economic demand.

Successful integration and assimilation of all these factors will be crucial to achieve a quantum jump in overall growth and development of the economy. Here, it is imperative to note that covid-19 has certainly brought out untapped domestic potential of Indian Markets and the ever-growing domestic demand for local goods and services due to lockdown, which has provided the requisite momentum to the economy to sustain through the toughest phase of pandemic, thus building a new strategic roadmap for the growth of India's agriculture, manufacturing and services sectors.

### OUR ROLE AS 'CORPORATE LAWYER' OR 'GOVERNANCE PROFESSIONALS'

While working towards successful and prolific implementation of this initiative, the commitment to contribute and make significant difference to Indian corporate community in leaps and bounds shall be of prime importance. Our role as professional shall be exhaustive to build up one of the strongest economic developed nations at global avenue. Few concrete measures for cementing the position of export import trade gap of the country, thus adding flavours of '**ATMANIRBHARTA**' are summarised below:

1. Introducing new strategically planned reforms and crisp foreign policies encouraging foreign infusion of funds in various sectors to an extent which gives them an opportunity to merely participate in our economy and gain returns but not dominate our economy through the same.

2. Adoption of digitalization and simplified processes for establishing manufacturing and supply units in India for ease of foreign investors, and ensuring their continued patronage for longer durations, thus, fulfilling the demand of adequate cash flow in the economic veins of the country.

3. Accessing and grooming those manufacturing sectors and financial units which promotes exports on wider scale by reducing burden of excessive compliance, taxations etc. and encourage participation of domestic investors to set up the same by alluring them with significant benefits.

4. Conduction of various programmed, seminars, promotional conference, trade fairs by such professional and invite future prospective investors to participate and gain adequate awareness and knowledge pertaining to all the amendments made in domestic laws, compliance, schemes and various initiatives undertaken by the government for encouraging domestic trade and making India "self-reliant "

5. Being a corporate lawyer, our roles shall also emphasize on making corporate policies viable, lucrative and substantially approachable for foreign investors to inject their funds in our economy, thus patronizing value of 'Indian Rupee' globally and make remarkable influence in international market.

6. In order to ensure that foreign investors to retain their investments in India, we must oath to strive for stringent adherence to statutory and regulatory compliances, so as to build up investor confidence and guarantee sustainable development despite of poisonous volatile global scenario where best of world economies are experiencing dimmed collapse. This would need lot of initiation, monitoring and command including unison efforts with a passionate commitment to the cause.

7. Stringent governance norms and adherence to such norms shall play a key role in gaining investor confidence, seeking their continued participation of FII/FPI/ etc for availing benefits of cultural exchange and technical know-how and many more.

8. Compliance must be tailor made and user friendly and easy to abide by rather than causing hindrances for investors, thus ensuring

maximum umbrella of investments pouring in from across the globe, thus creating a cliché of demand of domestic goods abroad and promoting exports to a large extent.

9. Existing laws pertaining to infusion of foreign funds may be simplified and digitalised in a manner that attracts the interest of prospective investors and adequate guidance can be provided to such investors by Indian professionals.

10. Foreign laws and its knowledge can be educated to corporate lawyers for taking up assignments at international levels and not just stick to traditional approach of complying with domestic laws, which shall increase our scope of earnings in foreign currency, thus promoting the growth of our economy.

Under such paradigm of health and global governance challenges, nations worldwide are left with no other alternative but to design a national-resilient framework. Looking at India's local logistics network structure, it is quite strong, however, to substitute primary reliance on foreign countries shall sooner or later require tech-abundant Indian aggregators coming together to ensure a faster and wider reach. This will empower the domestic companies; increase the demand within the home market; encourage mass-scale employment, and eventually lead to economies of scale. It will also open investments opportunities for adaptable and technology-enabled Indian logistics companies. If India wishes to reap this global advantage before it makes a demographic transition; it needs to use its strategically gifted demographic structure more diligently in the coming two decades. There is nothing better for the country than to become self-reliant – a vision of Mahatma Gandhi to whom we owe everything. The speed of resumption of economic activity will therefore be the key determinant in preventing the ongoing economic recession from growing into a depression. Further, preference of quality over speed for manufacturing of goods shall also contribute to sustainable economic growth as well.

*Thus, strengthening self-reliance is an important development goal for everyone, no matter where you are on the continuum of accountability.*

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## ROLE OF COMPANY SECRETARY AND AATMA NIRBHAR BHARAT ABHIYAN



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### AATMA NIRBHAR BHARAT ABHIYAN

"*Self - Reliant Bharat Mission*" is a new and energizing concept brought forward by the Government of India via its stimulus package declared on May 12, 2020 amidst the ongoing economic and health crisis surrounding the globe.

Touted by many as a reformed 'Make in India' movement introduced by this Government earlier, Aatma Nirbhar Bharat Abhiyan focuses on more in depth reform packages.

Probably the first success in the Abhiyan was production of PPE kits in the country rather than importing the same from our neighbouring nation and subsequently becoming the second largest producer and exporter of the same in the world in just a span of 2 months.

Taking above as an example, we can estimate the growth prospectus which India, as a Nation, possesses in years to come. With such a great prospectus and probability to flourish, the role of professionals becomes the core point of focus. The reason being growth would be induced through set-up of more and more factories/service industries which in turn would lead to a splurge in the number of companies operating in India. A significant increase in number of companies would drastically increase the responsibilities on the professional community as a whole.

Talking specifically about the CS fraternity, the role of Company Secretary (both in Employment as well as Practice side) would be primarily important. Traditionally, Company Secretaries were touted as the torch bearer of compliance work of the company. From Old era to Modern era, the role of Company Secretary has evolved

at a significant rate. From a Secretary to the Company's Compliance work to becoming the Compliance Officer and sometimes playing a pivotal role in the decision-making capacity of the Board, the role of Company Secretary has seen the brighter side of growth.

Moreover, A Company Secretary in Employment himself/herself represents the "*Aatma Nirbharta*" of the Company with respect to fulfilment of compliance with various Statutes/Regulations applicable to that particular Company.

The role of Company Secretary is moulded in such a manner that it becomes a primary function to look after and make sure that the Company is self-reliant and capable of complying with all the laws and rules it is mandated to follow under various acts. So, to state precisely, before the launch of "*Aatma Nirbhar Bharat Abhiyan*" the role of Company Secretary always focused on making the Company Self-reliant with respect to fulfilment of various compliances mandated to it under the law.

### CONNECTION BETWEEN AATMA NIRBHAR BHARAT ABHIYAN AND ROLE OF COMPANY SECRETARY

With the resurgence of business opportunities in India and possibility of world focus shifting to India from our Neighbouring Dragon Nation, the "*Aatma Nirbhar Bharat Abhiyan*" Scheme is implemented and popularized by our Hon'ble Prime Minister and his office. The focus of scheme is very precise and simple and that is to Make India Self-reliant in each and every sphere of life, may it be production of mobile phones in the country to building spare parts and machinery for our own defence system, manufacturing small needles to servicing to global MNC's from India, the scheme simply aims to make India self-reliant as much as possible in every spheres of manufacturing to service industry, but does that mean we should stop Importing? Answer is a plain "NO" because

this scheme focuses on bringing the technology to India and using it for the betterment of its people. The First step of the scheme is itself to Import that technology which it currently does not possess. So Import would be still on, but the main aim of this scheme is to marginalize/reduce the gap between Import and Export Figures. Obviously, efforts to do this is in place since times immemorial but never was such a focused scheme in place which makes the “*Aatma Nirbhar Bharat Abhiyan*” more attractive to prospective business owners and investors from around the world.

Now talking about the linkage between the “*Aatma Nirbhar Bharat Abhiyan*” and Role of a Company Secretary, we can understand the same by the following:

Prospective Business Owner (Indian or Foreigner) investing in new business under the “*Aatma Nirbhar Bharat Abhiyan*” scheme



The business entity may take the shape of Company/LLP/Partnership/Proprietorship Concern, but here we would focus upon Company and LLP



The entity, once established, would initiate its operations and subsequently would be governed by various regulations like Companies Act, LLP Act, Income Tax Act, Goods and Service Tax Act, Employee State Insurance Act, FEMA Act, Contracts Act, IPR Laws and many other local regulations



The Companies which would attract provisions of Section 203 (Appointment of Company Secretary) would have to employ as Company Secretary on its payroll who than would be responsible to make sure that the company complies with the aforementioned laws/rules. For those Companies which does not attract the provisions of Section 203 and for LLP’s, they may consult the services of a Practicing Company Secretary to guide them in fulfilling the compliance with the aforementioned laws/rules.

As per the above chronology, it can be very well understood that initiation of new business cycle under the “*Aatma Nirbhar Bharat Abhiyan*” scheme would ultimately lead to more

responsibility on the Professional Fraternity of the country and in particular, the Company Secretaries as they are the ones on whom the Business can depend to make itself “*Aatma Nirbhar*” in relation to all compliance under various laws.

## IMPACT ON ECONOMIC CYCLE

Sometimes, a single business conglomerate can have a much larger impact on the economy of a country as compared to many businesses coming together. As seen in India, we experience a few large conglomerates who run the entire economic show on its own shoulders. To reduce the burden on these conglomerates and to revive the economy, the “*Aatma Nirbhar Bharat Abhiyan*” would play a crucial role.

The more business new Companies/LLP’s would do, the more transactions/contracts it would enter into and subsequently the more alert and informed should the compliance caretaker of the entity should be. With increase in opportunity comes the increased risk factor in all areas of business from operations, finance, legal and so on.

The role of Company Secretary thus would be not limited only till the legal aspect of the entity but will exceed to being torch bearer of compliance, he/she would have to expand his role beyond the horizons of legal aspects and try to understand, if not master, the other aspects of business such as Finance, Operations, Technical and sometimes even decision-making capabilities to assist the Board through updates on the recent happenings in the market and business environment in the nation.

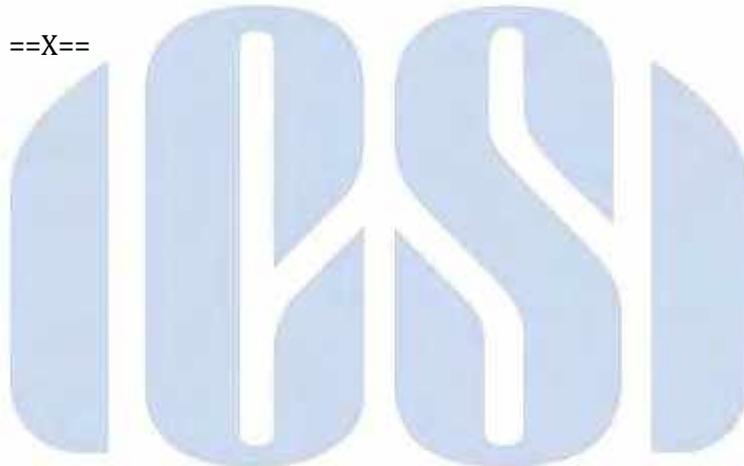
As we come to the conclusion of this article, there are few pointers which I feel necessary to showcase to you to highlight the importance of Company Secretary’s Role in the upcoming business environment which we, as a Nation, are expecting:

Just Like a Mother, who takes up the responsibility of maintaining and looking after various aspects of household raising her children in the right manner, and many other activities, the role of Company Secretary would be similar to it in a Company who should not only focus on legal aspect but all other important aspects of business of the Company to really become “*Aatma Nirbhar*”.

Just like a Teacher, who is responsible to guide the student in the right direction, to take up the responsibility of its future, to selflessly share knowledge to the student and to amend the mistakes made by the student, the role of Company Secretary would be similar to it in the fact that Company Secretary has to selflessly apply the knowledge of laws and regulations to make the company compliant, to guide the company in the right direction and amend any previous non-compliant actions made by the company

Just like a True Friend, who never betrays his friend, who always stands for his friend and who always acts for the good of his friendship, the role of Company Secretary would be beyond the horizon of compliance care-taker but instead be that of a care-taker for the well-being of the company as a whole and one who never betrays the trust imposed on him/her by the company and its owners.

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## COVID-19 RELIEFS UNDER LABOUR LAWS ANNOUNCED IN ATMANIRBHAR BHARAT ABHIYAN



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### INTRODUCTION:

Covid-19 Novel Coronavirus has brought the entire world to a standstill and it has possessed a threat to all countries whether developed or not of wiping out their economies. India is no alien to it and we have faced this situation with a spirit and have managed to keep the virus in check as compared to other developed countries. To ease the difficulties faced by the citizens of India due to the forced lockdown situation amidst the Covid-19 pandemic, Government of India, on **13<sup>th</sup> May 2020** announced the **ATMANIRBHAR BHARAT ABHIYAN** i.e the Self-Reliant India Movement with a slogan **VOCAL FOR LOCAL AND MAKE THEM GLOBAL** and released a Special Economic and Comprehensive Package of Rs. 20 Lakh Crores which is equivalent to 10% of India's GDP.

The package caters to various sections including Cottage Industry, MSMEs, Labourers, Middle Class and Industries.

The basic intention of this movement is to motivate the people of the country to produce in-house rather than depending upon foreign goods and an appeal to buy only local goods so as to reduce the dependence on foreign products / services and boost the economy.

### BENEFITS:

Under this package, Government of India has given benefits through Pradhan Mantri Garib Kalyana Yojna (PMGKY), Pradhan Mantri Jan Dhan Yojna, Relaxation in Statutory and Compliance matters, Measures by Reserve Bank

of India, Automatic loan for Business including MSMEs and many other. A detailed handbook on Atmanirbhar Bharat Abhiyan is available on <https://covid19.india.gov.in>

This article focuses on the Covid-19 relief measures under Labour Laws announced in the Atmanirbhar Bharat Abhiyan.

The major reliefs in labour laws are given under the Employees Provident Fund and Miscellaneous Provision Act 1952 (EPF) and Employees State Insurance Act 1948 (ESIC). The details of reliefs are as under,

#### (I) Employees Provident Fund & Miscellaneous Provision Act 1952:

1. GOI had announced relief under Pradhan Mantri Garib Kalyan Yojna (PMGKY) for the months of March 2020 to July 2020.
2. GOI will pay the 12% employee as well as 12% employer PF contribution for establishments fulfilling the following conditions;
  - Employee strength is less than 100 employees, and
  - 90% of employees earn monthly wages less than Rs.15000/-. Wages means Basic Salary plus Dearness Allowance.
  - KYC of all employees should have been updated
  - Employers should submit a declaration before filing the ECR.
  - Eligible Employers should not deduct PF contributions from employee's salaries

3. Employers eligible for these benefits have to pay the administration (0.5%) & inspection (0.5%) charges only.
4. GOI has also given relaxation to the condition of simultaneously paying the dues after filing the ECR. The establishments can now pay the dues later after filing the ECR however, dues should be paid within the due dates / extended due dates.
5. No penal action against the employer, if ECR is filed in time and dues are paid within the extended time.
6. For all those employees and establishment who are **NOT** covered under PMGKY, the statutory EPF rate of contribution will be **reduced from existing 12% to 10% till wage months of May 2020 to wage months of July 2020.**
5. The reduced rate will be applicable even if payments of wages are delayed. However, the benefit can be availed only for wage month of May 2020, June 2020 and July 2020.
6. The establishments which were already entitled to reduce rate of contribution (10%) through the SO 320 (E) dated 09/04/1997 are **NOT** eligible for any further reduction in rate of contribution.
7. The reduced rate of contribution (10%) is minimum rate of contribution during the period of package only i.e. wage month of May 2020, June 2020 and July 2020.
8. The employer or employee or both can contribute at higher rate also.

Central Public Sector Enterprises and State Public Sector Units will however continue to contribute 12% as employer contribution.

After the announcement, several questions were raised by the stakeholders regarding voluntary contributions above 10% by employees as well as employers.

In this regard, EPFO has issued the clarifications in the FAQs released on 20/05/2020.

Following points are clarified by EPFO,

1. The package as on date is applicable till August 2020 i.e. Salary payment of July 2020.
2. The establishment availing Pradhan Mantri Rojgar Yojna (PMRPY) benefit are also eligible to remit at reduced rate 10%.
3. The reduced rate will be applicable for all establishments which get registered with EPFO during wage months May 2020, June 2020 and July 2020.
4. The reduced rate of 10% is applicable to exempted establishments also.

#### **FOLLOWING ARE ALTERNATIVES FOR REMITTANCE OF DUES :**

- Employee and Employer both 10%
- Employee and Employer both 12% (allowed, excess 2% will be treated as voluntary contribution.)
- Employee 12 % and Employer 10% (allowed, excess 2% will be treated as voluntary contribution by employee. As announced in the relief package it is not mandatory for Employer to pay at higher rate if employee opts for voluntary contribution at higher rate)
- **Employee 10% and Employer 12% (NOT allowed, as per section 6, employees contribution shall be equal to the contribution payable by employer)**

**The deduction rates of EPF challan for the wage month of May 2020, June 2020 and July 2020 will be as under:**

SR.NO	HEAD	RATE OF CONTRIBUTION
1	Employee Contribution	10%
2	Employer Contribution	
2a	EPF	1.67%
2b	Pension	8.33%
3	Admin	0.5% or Rs.500/-

		whichever is higher
4	Inspection	0.5% or Rs.500/- whichever is higher
	<b>TOTAL</b>	<b>21%</b>

#### **BENEFITS TO EMPLOYEES:**

1. For employees, GOI has allowed the employees in service to withdraw 75% of accumulated balance or 3 months of salary (Basic + DA) or the claim amount whichever is lower.

2. Software changes have been made to make date of birth corrections as under;

- If the difference in date of birth in EPFO and Aadhar Card is less than 01 year, such correction request will be auto approved.
- No documents will be required to make corrections if the difference in date of birth in EPFO and Aadhar Card is less than 03 years.

3. Prerequisite to file withdrawal / advance withdrawal claims,

- UAN should be activated
- Aadhar Card should be linked with UAN
- Bank account with IFSC should be seeded with the UAN
- Mobile number should be seeded with the UAN

#### **(II) EMPLOYEES STATE INSURANCE ACT 1948:**

1. ESIC has not specifically come up with notification stating whether treatment for Covid-19 is covered under ESIC or not.

However, various queries were raised with the ESI authorities regarding the same, and some officials which are reliable sources have clarified that, **definition of sickness under ESIC does not specifically exclude Covid-19 and hence it is implied that treatment of covid-19 will be covered under ESI Act.**

**Further, ESIC has dedicated few of its hospitals and have also set up laboratories for Covid-19 treatment.**

2. ESIC beneficiaries may now avail non-covid medical services including emergency and non-emergency through tie-up hospitals during the period for which concerned ESIC hospital functions as dedicated Covid-19 hospital.

3. ESI beneficiaries without any referral letter can be referred to tie-up hospitals for providing prescribed secondary/SST consultation/ admission / investigation during the period for which concerned ESIC hospital functions as dedicated Covid-19 hospital.

4. All treatment / procedure will be given in ESIC tie-up hospitals even if there is no ESI tie-up for any specific treatment / procedure.

5. Medical services from ESIC Hospitals which are designated to provide Covid treatment and where medical services were earlier curtailed in view of corona pandemic resume the work w.e.f 5<sup>th</sup> May 2020.

6. In order to ease out the hardship of ESI beneficiaries in this tough time, ESIC has allowed the purchase of medicines by beneficiaries from private chemists during the lockdown period and its subsequent reimbursement by ESIC.

7. In order to provide quality medical care in the newly implemented 102 designated districts, ESIC has entered into partnership with Pradhan Mantri Aarogya Yojna – Ayushman Bharat for providing medical care through Ayushman Bharat empanelled hospitals without any referral up to ceiling of Rs. 5 Lakhs. The individual cases of expenses above Rs. 5 Lakhs will be channeled to ESIC for approval.

#### **SUMMARY OF BENEFITS GIVEN UNDER EPF & ESIC :**

1. EPF organisation settles 36.02 lakh claims worth Rs.11,540 Crores in April 2020 to May 2020.

2. EPFO updates KYC of 52.62 lakh subscribers since 1<sup>st</sup> April 2020.

3. EPFO disburses Rs.868/- Crores of Pension along with Rs.105 crore arrears for commutation.

4. ESIC gave cash benefits (including Maternity Benefit, Permanent Disablement Benefit, Dependent and other benefit) to the insured persons and their beneficiaries as under,

a. March 2020 – Rs. 117.72 crores to 3.67 lakhs beneficiaries

b. April 2020 – Rs.69.16 crores to 2.70 lakh beneficiaries

**Role of Company Secretary:**

Labour laws compliance which are majorly employees oriented are mostly looked upon by Human Resource professionals only. At present many establishments are outsourcing the work of labour laws compliance to the external consultants and the HR team supervises them. However, due to minimal supervision and accountability, the compliances are not carried out professionally and ethically and ultimately the employees has to suffer. Also, there are many instances where Companies have to go through lengthy legal proceedings for improper compliances.

Company Secretary being a Compliance Officer should ensure that compliance under various labour laws applicable to the company are properly dealt with and carried out professionally so as to safeguard the interest of both the employees as well as the employer.

The Company Secretary should give same importance to labour laws compliance as they give to the routine Company Law and related compliances.

The scope of labour laws is too vast, and the Company Secretary should become Atmanirbhar in dealing with it as safeguarding the interest of employees and employers is a part of Corporate Governance. Labour Laws is a niche and due to its vast challenging scope, it will open up as a new avenue for the Company Secretaries.

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## ROLE OF COMPANY SECRETARY AND AATMA NIRBHAR BHARAT ABHIYAN



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### WHAT IS AATMA NIRBHAR BHARAT ABHIYAN?

H'ble Prime Minister of India while addressing to the nation on May 12, 2020 came up with Aatma Nirbhar Bharat Abhiyan (ANBA) for the first time that simply means a Self-Reliant India. PM wants all Indian companies to set-up local production which shall compete with world class standards in an affordable price ranges and develop supply chain across the world. ANBA would primarily focus on economy, infrastructure, system, demography and demand which would make India ready to accelerate its growth after this pandemic.

India had promoted "MAKE IN INDIA" campaign earlier too and now with the same vision Aatmanirbharta is being echoed by our PM considering the need of local products in the situation of lockdown and focusing more on pillars of Self-Reliant India i.e. land, labour, liquidity and law.

Indians have great potential to make the world class products. To illustrate, during the current pandemic situation, the industry of Personal Protective Equipment (PPE) has grown from 0 to 4.5 lakh pieces per day and has witnessed 56 times growth in last 60 days and Indian PPE industry became INR 7,000 Crore, i.e. second largest PPE industry in the world after China. Local products will soon become global when people start adopting, liking, branding and promoting it. Thus, we can say that, it's high time to become "vocal for local" and let the world recognize the presence of Indian rivalry.



### DETAILS OF STIMULUS PACKAGE UNDER AATMA NIRBHAR BHARAT ABHIYAN

However, indeed to produce a world class standard product, manufacturers need world class standard facilities, infrastructures and resources. To mitigate the need of manufactures and help them to fight with this economic slowdown caused due to COVID-19, PM announced a special economic package of INR 20 Lakh Crore i.e. 10% of Indian GDP, one of the largest stimulus packages announced by any emerging country as on date. The stimulus package will help to increase liquidity into the market and aid the local industries to survive, expand and grow in this crises by making available various subsidized loans and other benefits for agricultural, MSME, power, coal, mining and defense etc. sectors.

In spite of this, the International Monetary Fund projects that India's economy will grow by just 1.9% this year and the government, manufacturers and even consumers will have to face many challenges while execution of self-

reliant campaign and to fully overcome financial and health crises.

## **KEY CHALLENGES BEFORE GOVERNMENT, MANUFACTURERS AND CONSUMERS:**

Following are the key challenges to make Aatma Nirbhar Bharat:

1. **Extra Cost to Consumers:** Aatmanir Bharata Abhiyan aims to substitute foreign products with domestic products which may not be equivalent to the price of foreign products. Due to lack of economies of scale, innovative technology, cheap labour supply and other critical factors, domestic products may not compete foreign products in price, results in higher price of local products in India than that of foreign products which will load extra cost on consumers.

2. **Inefficient Quality Products:** Efficiency means maximizing labour productivity with minimum efforts or cost. Indian producers have to compromise with quality of products to survive in the market and compete with price of imported goods. However, these low quality products are eventually bypassed by better quality imported products as many developed countries and emerging countries like China, Japan make good quality products by use of latest technology and machinery. India imports most of the machineries or parts thereof for improving quality of different products in India.

3. **Skilled Labour:** Efficiency comes from skilled labour who knows how to maintain quality of product while saving cost of the organization. According to The Global Competitiveness Report 2018 produced by World Economic Forum, India ranked 96<sup>th</sup> in labour skills, while Finland was at the 1<sup>st</sup> rank. Frequent vocational training is a need of time to increase productivity level in labour, so that quality of products will improve while achieving economic of scales, unfortunately India is far behind in improving dynamic skills in labour.

4. **Poor Education:** "Education is the most powerful weapon which you can use to change the world and no country can really develop unless its citizens are educated", these great words are said by Mr. Nelson Mandela. As per the research held in the year 2020, India got 33<sup>rd</sup> rank in well-developed education system which is very poor than rest of the world. According to Observer Research Foundation, the adult

literacy rate in India is 73.2%. A poor education system is a biggest challenge before ANBA and India is chasing it since many decades. A poor education system generate unskilled labour that further cause lower productivity, low export, lesser income and slow GDP growth of a country.

5. **Sparse Research & Development:** As per the World Bank data, India devote only 0.6% of its GDP on Research & Development activities in the year 2018. This is well below than major countries like China (2.1%), US (2.8%), Korea (4.2%) and Israel (4.3%). Lower expenses in R & D leads to lower innovation in India and that's the reason India has to depend on other countries for technical know-how.

6. **Obsolete Technology:** There is huge scope for technological development in India since India ranked 44<sup>th</sup> in World's Digital Competitiveness Ranking as on 2019 as per IMD World Competitiveness Center Report which was measured based on three key factors viz. technology, knowledge and future readiness. It is latest innovative technologies which supports foreign producers to make better quality products and sell these products in Indian markets at a cheaper price which leads to reduction in market share of domestic producers or even shut their businesses. Measuring the innovation capabilities as per The Global Competitiveness Report 2018 produced by World Economic Forum, India ranked at 31<sup>st</sup> (with 53.8 points) while Germany topped (with 87.5 points) and it was said in the report that, the business dynamism is hampered due to administrative hurdles in India.

7. **Unemployment:** Since Globalization unemployment is a major problem before us and it has improved considerably during lockdown in India as many factories and work stations remain shut for many days or operative on very less capacity. Contract labour and workers lost their work in first few days of lockdown and gradually employees of the companies were fired from jobs due to which unemployment level rises drastically in India. According to statista.com, the unemployment rate in India has risen to 24% as on 17 May, 2020 as against 6.6% on 26 January, 2020.

**Lack of Demand/Supply:** The COVID-19 pandemic has resulted in financial crises throughout the world. Indian Government has called for mandatory lockdown in the entire country due to which a certain fall in domestic

and international business transaction is noticed. People have lost their wealth and jobs which has adversely impacted on purchasing power of the consumers as they now want to spend on essential items only and save the money for future uncertain emergencies instead of wasting it on buying luxury goods. Due to lack of supply of domestic and imported raw material and closure of factories, many vendors are unable to mitigate the market demand. The above challenges have become hurdle in accomplishing the goal of Aatma Nirbhar Bharat.

### **MODERN STRATEGIES TO RESOLVE CHALLENGES:**

It's high time to prepare world class modern strategies after analyzing the above challenges on ground level and execute the plan of Aatma Nirbhar Bharat wisely. Followings are some modern strategies inspired by developed countries, which can be followed by India to become self-reliant.

1. **Modern Education System:** A modern technical and skill oriented education system should be adopted by every Indian school instead of theoretical one. Since primary to higher secondary, every school should be equipped with digital learning channels, so that student will become friendly with modern technologies since childhood. Public and private schools should undergo audit for ensuring the competencies of schools and teachers. The auditors shall monitor the improvement in performance of students and cancel the licenses of schools those are not found up to the mark. An expert in education and other fields shall mandatorily be appointed as an Independent Consultant by every school who can direct the modern and progressive ways of innovative learning like Mr. Sonam Wangchuk who is an engineer, innovator and education reformist. Even a basic graduation degree should not be granted unless the candidate compulsorily undergoes at least 1 to 2 years industrial training and learns some technicalities out of it for its survival.

2. **Collaborate Research & Development:** The government's R & D centers should be available at every district level which may be funded by local companies Corporate Social Responsibility (CSR) funds. Companies will be happy to pay for it, as benefits derived from new research of these R & D centers will pass-on to local industries first. These R & D centers shall operate under a leadership of expert scientists because the success of ISRO was marked

remarkable only when research was conducted under a great leadership. Even the licenses of universities shall be granted only when there is small or large R & D center available for students. Annual Performance Audit of all R & D centers should be conducted by third party agencies.

3. **Boost Innovation:** People will automatically equip with innovative ideas if education and R & D system are conducted in above manner. Presently, India is a third largest market by size in the world and there are so many start-ups in India. A suitable platform is created for eligible start-ups where they can take some benefits from government like 'Start-up India Scheme' which is really appreciable but not enough. The government intervention is critically required in start-ups to reduce the risk of failure, overcome out of market failure and encourage their efforts and investments. We can learn from Israel Government who continuously supports, monitors, funds, reviews and assists all start-ups in their country and that's the reason 600 successful start-ups come every year from this small country. Israel is ranked as 2<sup>nd</sup> in Innovation Index of Global Financial Forum Report 2018. The outcome of innovation from a big country like India when government starts actively supporting start-ups will be beyond imagination.

4. **Labour Skill Improvement Programs:** Industrial Training Institutes (ITI) are available in India for educating students, but for illiterate workers industrial training programs is to be arranged by local industries with the help of government training centers which will reform the labour skills in urban and rural area as well. Just like China, India can also form a law for Vocational Education and Training programs and compulsion on students to undergone training at higher secondary school level. A modern vocational training school need to be formed which can adopt the world culture and develop the world class skilled labour in India. Development of skills in workers directly improves the quality of products and economic of scale to compete in international markets. India should focus more on improvement in agricultural skills as India has core competencies in agriculture and most of the labour are still farming in traditional way.

5. **Reform Employment Opportunities:** According to World Bank data unemployment rate in India was 5.4% in 2019 which has risen upto 24% in 2020 due to COVID-19 pandemic. A social platform is to be created by the

government where unemployed people register themselves and government will call new subsidies projects in less employed region to enhance employment opportunities. Necessary industrial trainings need to be provided to those workers for their sustainability. A platform should work like a rehabilitation center for people those are unemployed since very long time by identifying their interest & skill from day to day activities and encourage them to learn new skills. Private players should participate in providing skill development training programs especially in MSME and agricultural areas. Appreciation certificates & rewards should be allotted to high employment generation start-ups and encourage their work.

### **ROLE OF PROFESSIONALS IN AATMA NIRBHAR BHARAT ABHIYAN:**

In a phase where India is struggling to become self-sufficient, the professionals have to contribute significantly by playing a vital role in Aatma Nirbhar Bharat Abhiyan as professionalism entails an expert knowledge and skills delivered to the society following a standard of conduct based on ethical and moral values. The professionals, being role model for others may obtain confidence of public and become a solution to create awareness about Aatma Nirbhar Bharat and its impact on industry in long run.

### **ROLE OF COMPANY SECRETARY:**

Collective efforts of all professionals can deliver local development and a more equitable society. In that view, professional like Company Secretary can contribute considerably in Aatma Nirbhar Bharat Abhiyan by its crucial role as Key Managerial Personnel or a Practicing Professional for local industries. Now it's a high time for all Company Secretaries to take Aatma Nirbhar Bharat as their responsibility, assigned towards welfare of nation and not just a need.

Following duties to perform by a Company Secretary as his/her responsibility in Aatma Nirbhar Bharat Abhiyan:

### **AS A KEY MANAGERIAL PERSONNEL:**

- Encourage company to prefer local suppliers and vendors instead of outsiders

- Encourage company to locally mobilize resources by developing partnership with start-ups and MSME entities
- Encourage company to focus on capacity development investments which can generate new employment opportunities for local people
- Encourage company to conduct Vocational Education and Training Programs for development of labour skills in local people as a part of Corporate Social Responsibility
- Encourage company to identify the underdeveloped local areas and promote a better way of doing something, share an innovative ideas, give new directions to the society and spread awareness for education in its leadership
- Encourage company to allow educational visits in industrial plants and share business model for better understanding of students which will inspired them in future work
- Encourage company to support public administration reforms and collaborate efforts with them for local development
- Encourage company to go global and compete in international market
- Encourage Company to do more research & development by deploying enough resources and time for experiments

### **AS A PRACTICING PROFESSIONAL:**

- Inform clients about government schemes and help them to get benefit out of it like MSME scheme, start-up scheme and their benefits
- Conducting Public Awareness Programs about government schemes and benefits thereunder and share it with others by using social media or other platforms
- Recommend clients for industry diversification in a view to create employment opportunities
- Suggest innovative business ideas for development of local industries

- Insist client to spend their Corporate Social Responsibility funds in education and training in rural areas for the benefit of poor and under privileged people
- Solve problems of Start-ups and MSME entities and play multiple roles for them like convener, planner, supervisor, advisor, manager etc.
- Try to arrange subsidies and borrowed funds to Start-ups and MSME entities for their sustainable development
- Be vocal for local

## CONCLUSION:

It is possible to be both self-reliant and globalized at the same time, only when world class products are being manufactured in India by local players in self-sufficient manner. When people start living without imported products or substituting foreign products with local products which are capable of being sold in international market in affordable prices then India can become global example of self-reliant economy. It's a high time to be vocal for local and make India ready to fight independently with future challenges like COVID-19 under Aatma Nirbhar Bharat Abhiyan. The Company Secretaries should accept this responsibility and perform wisely in the best interest of nation. Take it a situation like now or never because every revolution happens after the crises.

## BIBLIOGRAPHY:

<https://www.investindia.gov.in/siru/personal-protective-equipment-india-INR-7000-cr-industry-in-the-making>  
<https://www.civildaily.com/news/what-self-reliant-economy-means/>  
<https://www.imf.org/en/Countries/IND>  
<https://www.statista.com/statistics/1111487/coronavirus-impact-on-unemployment-rate/file:///C:/Users/shree/Downloads/imd-world-digital-competitiveness-rankings-2019.pdf>  
[https://data.worldbank.org/indicator/GB.XPD.RSDV.GD.ZS?locations=IN&name\\_desc=true](https://data.worldbank.org/indicator/GB.XPD.RSDV.GD.ZS?locations=IN&name_desc=true)  
<http://www3.weforum.org/docs/GCR2018/05FullReport/TheGlobalCompetitivenessReport2018.pdf>  
[https://www.orfonline.org/research/literacy-in-india-the-gender-and-age-dimension-57150/#\\_ftnref1](https://www.orfonline.org/research/literacy-in-india-the-gender-and-age-dimension-57150/#_ftnref1)

## CROSS BORDER INSOLVENCY



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### BACKGROUND

If the insolvency/liquidation proceedings on account of unpaid debt is initiated in the country other than the country wherein the Registered Office of the Corporate Debtor (Company) is existed, it amounts to cross border insolvency.

### ENFORCEABILITY OF FOREIGN JUDGMENTS & DECREES PASSED BY FOREIGN COURTS

The Foreign Judgement or decree is required to pass the test of Section 13, 14 and 44-A of the Civil Procedure Code, 1908 (Code). Indian Judiciary enforce such foreign decrees and judgments in India which is in consonance with the basic fundamental rules and laws in force in India. A foreign judgment, whether passed by a Court in a **reciprocating or non-reciprocating territory**, must pass the test of Section 13 of the Code. *Vis-à-vis* case of a decree of a Court in a Non- Reciprocating foreign territory, the same can be enforced in an Indian Court of competent jurisdiction by filing a suit on that foreign decree or on the original, underlying cause of action, or both. Such decree cannot be straightaway executed (*Viswanathan v Rukn-Ul-Mulk Syed Abdul Wajid, AIR 1963 SC 1 19 of 22 CP69-13-F.DOC*)

**Section 13** embodies the principle of *res judicata* in foreign judgments. The judgment of a foreign court is enforced on the principle that where a foreign court of competent jurisdiction has adjudicated upon a claim, a legal obligation arises to satisfy that claim in the country where the judgment needed to be enforced. Such a recognition is accorded on the basis of consideration of basic principle of justice, equity and good conscience. Section 13 lays down the

fundamental rules which should not be violated by any foreign court in passing a decree or judgment. The decree or judgment of foreign court will be conclusive except where it comes under any of the clauses (a) to (f) of Section 13. Otherwise, it would not be considered conclusive and consequently not legally effective and binding. The provisions of the CPC are applicable for enforcement of foreign judgments, both from reciprocating and non-reciprocating territories. Section 44-A of the Code of Civil Procedure, 1908 are applicable in both the cases. A foreign judgment shall be conclusive as to any matter thereby directly adjudicated upon between the same parties or between parties under whom they or any of them claim litigating under the same title.

### FOREIGN JUDGEMENT OR DECREE WHICH IS INCONCLUSIVE OR FALLING U/S 13 OF CPC

**(a) Where it has not been pronounced by a Court of competent jurisdiction.**

In the matter of *Kitply Industries Ltd Vs. California Pacific Trading Co.* Company Judge on 19.11.2008 held that Court can't go behind decree of the U.S. Court and examine the legality of the foreign decree. The respondent Kitply filed Company Appeal No. 1/2009. The learned Division Bench considered the appellant's contentions and noted, *inter- alia*, in its preliminary order that proceeding under Section 439 is not a proceeding for execution of a decree. and rejected Kitply's objection that a petition under Section 439 of the Company's Act is not maintainable. The Appellate Court opined that California is seeking recognition of a decree passed by a foreign court and not its execution and since winding up is not an

execution proceeding, even in the absence of an appropriate notification by the Central Government under Section 44 A of CPC, the company proceeding is maintainable and accordingly the appeal was posted for hearing. The Supreme Court while disposing of the S.L.P. on 23.10.2009 ordered the High Court to decide all the points urged by the parties. Thereafter, *in the matter of California Pacific Trading Cor vs Kitply Industries Ltd on 2 May, 2011*. Before the Hon'ble Mr Justice Hrishikesh Roy of Gauhati High Court held that the foreign decree was not by a Court of competent jurisdiction, from the reasoning given earlier, it is hereby held that the North Carolina Court neither had jurisdiction to try a claim for damage nor does the said Court acquire jurisdictional competence, through the pro-se response filed by the defendant in that Court. *Similarly, In R.M.V. Vellachi Achi v. R.M.A. Ramanathan Chettiar*. Such judgment must be by a court competent both by law of the state which has constituted it and in an international sense and it must have directly adjudicated upon the matter which is pleaded as Res judicata

**(b) Where it has not been given on the merits of the case.**

In the matter of *California Pacific Trading Co vs Kitply Industries Ltd on 2 May, 2011*. Before the Hon'ble Mr Justice Hrishikesh Roy of Gauhati High Court held that Foreign Court's decree is also declared to be inconclusive and hit by Clause (b) of Section 13 of the CPC. This is because the damage quantification was made by the Court without any acceptable evidence on record and the claimed loss suffered by the plaintiff was given on conjecture and surmise and accordingly it is declared that the North Carolina Court has not given its judgment on the merit of the case. *In Gurdas Mann v. Mohinder Singh Brar*. The Punjab & Haryana High Court held that an ex-parte judgment and decree which did not show that the plaintiff had led evidence to prove his claim before the Court, was not executable under Section 13(b) of the CPC since it was not passed on the merits of the claim; *In the case of I & G Investment Trust v. Raja of Khalikote*

**(c) Where it appears on the face of the proceedings to be founded on an incorrect view of international law or a refusal to recognize the law of India in cases in which such law is applicable.**

*In the matter of California Pacific Trading Cor vs Kitply Industries Ltd on 2 May, 2011*. It is further seen that the suit for damage was filed by the petitioner in the North Carolina Court 3 years after the alleged breach which is beyond the prescribed period of limitation in India. Since the foreign judgment to be conclusive, is required to be in conformity with the law in India, I hold that the North Carolina Courts decree is inconclusive, as it is covered by exception Clause (c) of Section 13 of the Code.

**(d) Where the proceedings in which the judgment was obtained are opposed to natural justice.** Under Section 13(d) of CPC, the following proposition may be laid:

(i) The foreign court must follow the principle of natural justice while delivering the judgment. Judgement must be impartial, given fairly, moreover, the parties to the dispute should be given appropriate notice of the initiation of legal proceedings.

(ii) Foreign judgment obtained by fraud. *Satya v. Teja Singh*

**(e) Where it has been obtained by fraud.**

*In the matter of California Pacific Trading Cor vs Kitply Industries Ltd on 2 May, 2011*. There is also reasonable basis for concluding that the judgment of the North Carolina Court has been obtained by playing fraud on Court. The relevant certificates showing that the materials were of contracted standards and dispatch worthy were withheld and the probability of the Court giving a different verdict if the withheld materials were available, is a distinct possibility. *In the matter of Sankaran Govindan vs. Lakshmi Bharathi reported in AIR 1974 SC 1764*, where the Court accepted that if a foreign judgment was obtained by fraud, it will be covered by the exceptions in Section 13 of the CPC and such judgment can't be held to be conclusive for use in Indian Courts. *In China Shipping Development Co. Limited v. Lanyard Foods Limited*, since the records of the case

manifestly revealed that the respondent Indian company was unable to pay its debts, the petition for winding up was admitted vide order dated 4.4.2007 under sections 433 and 434 of the Companies Act, 1956.

**(f) Were it sustains a claim founded on a breach of any law in force in India.**

*In Brijlal Ramjidas v. Govindram Gordhandas Seksaria*, Supreme Court held that Section 13 speaks not only of “Judgment” but “any matter thereby directly adjudicated upon”. The word ‘any’ clearly shows that all the adjudicative parts of the judgment are equally conclusive.

Section 13 of the CPC sets out the limits on application of decree passed by a foreign Court and no proceeding to recover a debt on the basis of a foreign decree can be initiated, without fulfilling the conditions laid down in Clauses (a) to (f) of Section 13 of the CPC. In support of this contention, he relies upon the decision of the Supreme Court in *Roshanlal Kuthalia vs. R.B. Mohan Singh Oberio* reported in (1975) 4 SCC 628 and *Smt. Satya vs. Teja Singh* reported in AIR 1975 SC 105. The decision of the Apex Court in *Raj Rajendra Sandar Moloji Nar Singh Rao Shitole vs. Shankar Saran* reported in AIR 1962 SC 1737 is also relied on by the learned counsel to show that the provisions of Section 13 of the CPC are not merely Rules of procedure but are Rules of substantive law and the decree of the U.S. court must be valid in the international sense and can't be enforced ipso facto in Indian Courts only because, the proceeding in the North Carolina Court conforms to the municipal laws applicable in USA. *In the case of Narhari Shivram Shet Narvekar vs. Pannalal Umediram* reported in AIR 1977 SC 164 to contend that an incompetent Court cannot exercise jurisdiction over a foreign subject merely because, the foreign subject responded to the summons of the Court particularly when, response was to the effect that the U.S. Court lacked territorial jurisdiction, to examine the claim of damages against the foreign defendant. *In R. Viswanathan vs. Rukn Ul Mulk Syed Abdul Wajid* reported in AIR 1963 SC 1, the Apex Court held that for a foreign judgment to be conclusive, it must be rendered by a competent court both by the law of the State which has constituted it and in an international sense, ... and the foreign court must be a court of competent jurisdiction. Sec.13(a)

The Supreme Court in *Roshanlal Kuthalia vs. R.B. Mohan Singh Oberoi* reported in (1975) 4 SCC 628 declared that foreign judgment is enforceable and conclusive subject to the exceptions enumerated in Section 13, CPC. *In Sankaran Govindan vs. Lakshmi Bharathi* reported in AIR 1974 SC 1764, it has been held that a foreign judgment can be impeached for fraud of the party, in whose favour the judgment is obtained. *In the Renusagar Power Co. Ltd. vs. General Electric Co.* reported in 1994 (Supp) 1 SCC 644, in the context of an award given by an Arbitrator, the Supreme Court declared that the phrase Public Policy of India would cover: -

- (a) Fundamental policy of Indian law; or
- (b) the interest of India; or
- (c) justice or morality, or
- (d) in addition, if it is patently illegal.

*In R.M.V.Vellachi Achi Vs. R.M.A. ramanathan Chettiar* reported in (1972) 2 MLJ 468. This case turns on Section 44-A CPC and it is essentially for the proposition that a foreign decree cannot be executed under CPC if it is hit by condition, as provided in Section 13(a) to (f) of CPC. It is also regarding the validity of *ex parte* foreign decree. The order of Supreme Court refused to interfere.

The Apex Court in *Raj Rajendra Sardar Moloji Nar Singh Rao Shitole*, it must be declared that the objections are substantive and not procedural and the U.S. Court's decree is not valid in the International Sense since it is hit by one or the other exception(s), stipulated in Section 13 of the Code.

**A FOREIGN JUDGMENT WHICH IS CONCLUSIVE AND DOES NOT FALL WITHIN SECTION 13 (A) TO (F), MAY BE ENFORCED IN INDIA IN EITHER OF THE FOLLOWING WAYS.**

**i) By instituting execution proceedings-**

Section 14 states the presumption that an Indian court takes when a document supposing to be a certified copy of a foreign judgment is presented before it. The Indian Courts presume that a foreign Court of competent jurisdiction

pronounced the judgment unless the contrary appears on the record, but by proving want of jurisdiction may overrule such presumption.

(a) Foreign judgement may be enforced by proceedings in execution in certain specified cases mentioned in Section 44-A of the CPC. Section 44A – Execution of decrees passed by Courts in Reciprocating Territory-(1) Where a certified copy of a decree of any of the superior courts of any Reciprocating Territory has been filed in a District Court, the decree may be executed in India as if it had been passed by the District Court. *In the matter of Goyal Mg Gases Private Ltd.(Appellant) vs Messer Griesheim Gmbh on 1 July, 2014, EFA (OS) 3/2014.* The definition of section 44A was discussed that any country or territory outside India which the Central Government, may by notification in the official gazette, declare to be a reciprocating country, so that now the Code puts all countries or territories outside India on an equal footing. Delhi High Court held that High Court of Delhi not being a 'District Court' in terms of Section 44A of the Code of Civil Procedure, 1908 is not vested with the jurisdiction to entertain the present Execution Petition. In view thereof, the same is liable to be transferred to the 'Court of District Judge' within whose jurisdiction the property sought to be attached is situated for being dealt with in accordance with law. *In California Pacific Trading Cor vs Kitply Industries Ltd on 2 May, 2011; COMPANY PETITION No. 10 OF 2002. Gauhati High Court.*

(b) **Certificate with the certified copy of decree:** The certified copy of the decree shall be filed together with a certificate from such superior court stating the extent, if any, to which the decree has been satisfied or adjusted and such certificate shall, for the purposes of proceedings under this section, be conclusive proof of the extent of such satisfaction or adjustment.

(c) The provisions of section 47 shall, as from the filing of the certified copy of the decree, apply to the proceedings of a District Court executing a decree under this section, and the District Court shall refuse execution of any such decree, if it is shown to the satisfaction of the Court that the decree falls within any of the exceptions specified in clauses (a) to (f) of section 13.

**Explanation I:** “Reciprocating Territory” means any country or territory outside India which the Central Government may, by notification in the Official Gazette, declare to be a reciprocating territory for the purposes of this section, and “Superior Courts”, with reference to any such territory, means such courts as may be specified in the said notification.

**Explanation II:** “Decree” with reference to a superior Court means any decree or judgment of such court under which a sum of money is payable, not being a sum payable in respect of taxes or other charges of a like nature or in respect of a fine or other penalties, but shall in no case include an arbitration award, even if such an award is enforceable as a decree or judgment. [ Explanation:-Judgement means the statement given by the judge on the ground of a decree or order. It is the decision of the court of justice upon the respective rights and claims of the parties to an action in a suit submitted to it for determination. Decree is a code as the formal expression of an adjudication which so far as regards the court expressing it conclusively determines the right of the parties with regard to all or any of the matters in controversy in the suit. An order is nothing but a judgement while a decree is a final part of judgement. The primary difference between decree and order is that the decree is given in a site, which determines the substantive legal rights of the parties concerned, the order is given in the part course of proceedings, and determines the procedural legal rights of the parties concerned].

### **The List of the Reciprocating Territories as per the Provisions of Section 44 A of the Code of Civil Procedure, 1908**

United Kingdom, Singapore, Bangladesh, UAE, Malaysia, Trinidad & Tobago, New Zealand, The Cook Islands (including Niue) and The Trust Territories of Western Samoa, Hong Kong, Papua and New Guinea, Fiji, Aden.

In the matter of *Moloji Nar Singh Rao vs Shankar Saran* Supreme Court held that a foreign judgment which does not arise from the order of a superior court of a reciprocating territory cannot be executed in India. It ruled that a fresh suit will have to be filed in India on the basis of the foreign judgment. “Therefore, under Section

44A of the CPC, a decree or judgment of any of the Superior Courts of any reciprocating territory are executable as a decree or judgment passed by the domestic Court. The judgment, once declared, will be executed in accordance with section 51 of the Code. Thereafter, the court may order measures such as attachment and sale of property or attachment without sale, and in some cases arrest (if needed) in enforcement of a decree. This is done by the methods discussed below.

**ii) By instituting a suit on such foreign judgment**

Where a judgment or decree is not of a superior court of a reciprocating territory, a suit has to be filed in a court of competent jurisdiction in India on such foreign judgment. The general principle of law is that any decision of a foreign court, tribunal or any other quasi-judicial authority is not enforceable in a country unless such decision is embodied in a decree of a court of that country. In such a suit, the court cannot go into the merits of the original claim and it shall be conclusive as to any matter thereby directly adjudicated between the same parties. Such a suit must be filed within a period of 3 years from the date of judgment. *In the case of Marine Geotechnics LLC v/s Coastal Marine Construction & Engineering Ltd.*, the Bombay High Court observed that in case of a decree from a non-reciprocating foreign territory, the decree-holder should file, in a domestic Indian court of competent jurisdiction, a suit on that foreign decree or on the original, underlying cause of action, or both.

However, in both the cases, the decree has to pass the test of Section 13 CPC which specifies certain exceptions under which the foreign judgment becomes inconclusive and is therefore not executable or enforceable in India.

**LIMITATION PERIOD FOR ENFORCEMENT OF FOREIGN JUDGMENTS**

As per the provisions of the Code, foreign judgments from Reciprocating Territories are enforceable in India in the same manner as the decrees passed by Indian courts. The Limitation Act, 1963 prescribes the time limit for execution

of a foreign decree and for filing of a suit in the case of judgment passed by foreign court.

- Three years, commencing from the date of the decree or where a date is fixed for performance; in case of a decree granting a mandatory injunction; and
- Twelve years for execution of any other decree commencing from the date when the decree becomes enforceable or where the decree directs any payment of money or the delivery of any property to be made at a certain date, when default in making the payment or delivery in respect of which execution is sought, takes place.

A judgment obtained from a non-reciprocating territory can be enforced by filing a new suit in an Indian court for which a limitation period of 3 years has been specified under the Limitation Act, 1963 commencing from the date of the said judgment passed by foreign court.

Thus, application for winding up of the company could be filed on the basis of foreign judgement, decree or award only if it passes the test of section 13, 14 and 44A of CPC 1908, otherwise suit was to be filed in the District Court.

**RECOMMENDATION FOR ADOPTION OF THE UNCITRAL MODEL LAW OF CROSS BORDER INSOLVENCY, 1997**

The International Law Commission (ILC) has recommended the adoption of the UNCITRAL Model Law of Cross Border Insolvency, 1997 to deal with cross border insolvency issues. It shows that there is no inconsistency between the domestic insolvency framework and the proposed Cross Border Insolvency Framework.

It is envisaged in the PREAMBLE of UNCITRAL Model Law on Cross-Border Insolvency that the purpose of this Law is to provide effective mechanism for dealing with cases of cross-border insolvency so as to promote the objective of:

- (a) Cooperation between the courts and other competent authorities this State and foreign States involved in cases of cross-border insolvency;
- (b) Greater legal certainty for trade and investment;
- (c) Fair and efficient administration of cross-border insolvencies that protects

the interests of all creditors and other interested persons, including the debtor;

- (d) Protection and maximization of the value of the debtor's assets, and
- (e) Facilitation of the rescue of financially troubled business, thereby protecting investment and preserving employment.

The necessity of having Cross Border Insolvency provisions under the Insolvency and Bankruptcy Code arises from the fact that many Indian companies have a global footprint and many foreign companies have presence in multiple countries including India. Although the proposed Framework for Cross Border Insolvency will enable us to deal with Indian companies having foreign assets and vice versa, it still does not provide for a framework for dealing with enterprise groups, which is still work in progress with UNCITRAL and other international bodies. The inclusion of the Cross-Border Insolvency Chapter in the Insolvency and Bankruptcy Code of India, 2016, will be a major step forward and will bring Indian Insolvency Law on a par with that of matured jurisdictions.

The model law deals with four major principles of cross-border insolvency, namely direct access to foreign insolvency professionals and foreign creditors to participate in or commence domestic insolvency proceedings against a defaulting debtor; recognition of foreign proceedings & provision of remedies; cooperation between domestic and foreign courts & domestic and foreign insolvency practitioners; and coordination between two or more concurrent insolvency proceedings in different countries. The main proceeding is determined by the Concept of center of Main Interest ("COMI").

Therefore, Insolvency Law Committee decided to attempt to provide a comprehensive framework for this purpose based on the UNCITRAL Model Law on Cross-Border Insolvency, 1997 which could be made a part of the Code by inserting a separate part for this purpose. Accordingly, this ILC Report provides recommendations of the Committee on adoption of the UNCITRAL Model Law and the modifications necessary in the Indian context. Globally, the UNCITRAL Model Law has emerged as the most widely accepted legal framework to deal with cross-border insolvency issues and legislation based on the Model Law has been adopted in 44 countries in a total of 46

jurisdictions. The UNCITRAL Model Law ensures full recognition of a country's domestic insolvency law by giving precedence to domestic proceedings and allowing denial of relief under the Model Law if such relief is against the public policy of the enacting country.

The Committee has recommended that the Model Law be adopted with necessary modifications. Broadly, the four main principles on which the Model Law is based on are as follows:

(i) **Access:** The Model Law allows foreign insolvency professionals and foreign creditors direct access to domestic courts and confers on them the ability to participate in and commence domestic insolvency proceedings against a debtor. Direct access with regards to foreign creditors is envisaged under the Code even presently. With respect to access by foreign insolvency professionals to Indian courts, the Committee has recommended that the Central Government be empowered to devise a mechanism that is practicable in the current Indian legal framework. The provision is corresponding to the Supreme Court in *Roshanlal Kuthalia vs. R.B. Mohan Singh Oberoi* reported in (1975) 4 SCC 628 declared that foreign judgment is enforceable and conclusive subject to the exceptions enumerated in Section 13, CPC.

(ii) **Recognition:** The Model Law allows recognition of foreign proceedings and provision of remedies by domestic courts based on such recognition. Relief can be provided if the foreign proceeding is either a main or a non-main proceeding. If domestic courts determine that the debtor has its centre of main interests ("COMI") in the foreign country, such a foreign insolvency proceeding is recognised as the main proceeding. If domestic courts determine that the debtor has an establishment (applying a test based on carrying on of non-transitory economic activity), such a foreign insolvency proceeding is recognised as the non-main proceeding. Recognition as a main proceeding will result in automatic relief, such as a moratorium on transfer of assets of the debtor, and allow the foreign representative greater powers in handling the estate of the debtor. For non-main proceedings, such relief is at the discretion of the domestic court. As per para (a) of Article 2 (Definitions) of UNCITRAL Model Law on Cross-Border Insolvency, "Foreign

proceeding” means a collective judicial or administrative proceeding in a foreign State, including an interim proceeding, pursuant to a law relating to insolvency in which proceeding the assets and affairs of the debtor are subject to control or supervision by a foreign court, for the purpose of reorganization or liquidation.

Para (b) provides “Foreign main proceeding “means a foreign proceeding taking place in the State where the debtor has the centre of its main interests. Para c envisages, “Foreign non-main proceedings” means a foreign proceeding, other than a foreign main proceeding, taking place in a State where the debtor has an establishment within the meaning of subparagraph (f) of this article. It is provided in para 1.8 of the ILC Report that the Committee recommended that initially the Model Law may be adopted on a reciprocity basis. It is corresponding to various cases

Some of the key advantages of adopting the Model Law with specific carve outs as recommended by the Committee are as under:

**(i) Increasing foreign investment:** Even though foreign creditors have a remedy under the Code presently, adoption of the Model Law will provide added avenues for recognition of foreign insolvency proceedings, foster cooperation and communication between domestic and foreign courts and insolvency professionals and so on. Popularity of the Model Law has increased in recent years and its adoption shall also enable India to align with global best practices in insolvency resolution and liquidation. Moreover, there will be significant positive signalling to global investors, creditors, governments, international organizations such as the World Bank as well as multinational corporations with regard to the robustness of India’s financial sector reforms.

**(ii) Flexibility:** The Model Law is designed to be flexible and to respect the differences amongst national insolvency laws. Therefore, necessary carve outs may be made in relation to the Model Law to maintain consistency with domestic insolvency law while adopting a globally accepted framework. For example, the moratorium under the Model Law may be tweaked to make it harmonious with the moratorium under section 14 of the Code; a reciprocity requirement may be incorporated for stakeholders in other countries.

**(iii) Protection of domestic interest:** The Model Law enables refusal of recognition of foreign proceedings or provision of any other assistance if such action contradicts domestic public policy.<sup>7</sup> Hence, it provides enough flexibility to protect public interest.

**(iv) Priority to domestic proceedings:** The Model Law gives precedence to domestic insolvency proceedings in relation to foreign proceedings. For example, a moratorium due to recognition of a foreign proceeding will not prevent commencement of domestic insolvency proceedings.

**(v) Mechanism for cooperation:** The Model Law incorporates a robust mechanism for cooperation and coordination between courts and insolvency professionals, in foreign jurisdictions and domestically. This would facilitate faster and effective conduct of concurrent proceedings. The overseas Corporate Insolvency will create an internationally aligned and comprehensive insolvency framework for corporate debtors under the Code, which is most essential in a globalised environment.

#### **Treatment of Foreign Judgment or decree under the Insolvency & Bankruptcy Code, 2016.**

The foreign judgement, decree was held by the Adjudicating Authority to be admitted on passing the test of section 13, 14 & 44A of the CPC, 1908, i.e. on the same basis. *In the matter of Usha Holding LL.C. & Anr. [Applicant/Operational Creditors v. Francorp Advisors Pvt. Ltd. [Respondent/Corporate Debtor].* Date of Judgment: 11.12.2017, NCLT, Principal Bench, New Delhi wherein the Adjudicating Authority by detailed order held:-

1. (a) In absence of a certified copy of a decree of any of the superior courts of any reciprocating territory, the said decree cannot be executed;

(b) Foreign judgement is not conclusive where it has not been pronounced by a Court of competent jurisdiction and founded on an incorrect view of international law;

(b). The Court shall presume, upon the production of any document purporting to be a certified copy of a foreign judgment, that such judgment was pronounced by a Court of competent jurisdiction unless the contrary

appears on the record; but such presumption may be displaced by proving want of jurisdiction.

2. While holding so, the Adjudicating Authority by impugned order dated 11<sup>th</sup> December, 2017, also held as follows:

“28. A conjoint reading of Section 44A of CPC along with Section 13 & 14 would show that the petitioner need to satisfy a number of requirements.

(A) *A certified copy is sine qua non for recognizing a decree as valid in India. Moreover, its compliance with the principles of natural justice also need to be shown.*

(B) *it is required to be executed in the District Court of this Country.*

(C) *It is also required that the decree should be pronounced by a Court of competent jurisdiction and on merits.*

(D) *The decree must not have been obtained by fraud and its must not be founded on a breach of any law in force in this Country.*

29. The petitioner has founded its claim and consequential default on the basis of decree dated 5.10.2015 and the order dated 27.3.2014. Both the documents placed on record are not certified copies of the decree and order. We further find that the decree needs to be made rule of the Court before the District in India if at all it is executable. The petitioner has miserably failed to show any notification of the reciprocation between United States and India in terms of Section 44 of CPC.

3. The Adjudicating Authority while rejecting the application under Section 9 of the I&B Code preferred by the Appellants for the grounds mentioned above, also held that the Appellants do not come within the meaning of Operational Creditors as the amount due has not been regarded as an ‘Operational Creditors within the meaning of Section 5(21) of the “I&B Code”.

The appeal was raised against the order. The Appellate Authority in the matter of *Usha Holding LL.C. & Anr. v. Francorp Advisors Pvt. Ltd;*

*Company Appeal (AT)(Insolvency) No.44 of 2018:* Date of decision 30<sup>th</sup> November, 2018. The NCLT observed, we also find force in the agreements that the decree dated 5.10.2015 and the order dated 27.03.2014 is in violation of the law prevailing in India in as much as Section 8 of the Arbitration and Conciliation Act, 1996 has not been followed” (para-2, page-3). **Reversing** the order, the Appellate Authority held that Adjudicating Authority has no jurisdiction to decide the question of legality and propriety of a foreign judgement and decree in an application under Section 7 or 9 or 10 of the I&B Code. The reliance was placed upon the case of *Binani Industries Limited Vs. Bank of Baroda & Anr.- Company Appeal (AT)(Insolvency) No.82 of 2018.* In the matter of *Arcelor Mittal Indi Pvt. Ltd Vs. Satish Kumar Gupta and Ors.*

*In Binani Industries Limited Vs. Bank of Baroda & Anr.- Company Appeal (AT)(Insolvency) No.82 of 2018 etc.* NCLAT Date of decision 14<sup>th</sup> November, 2018. The NCLAT held that Adjudicating Authority not being a Court or Tribunal and Insolvency Resolution Process not being a litigation, it has no jurisdiction to decide whether a foreign decree is legal or illegal. Whatever findings the Adjudicating Authority has given with regard to legality and propriety of foreign decree in question being without jurisdiction is nullity in the eye of law.

*In Mrs. Jai Kumar & Anr. Vs. Stanbic Bank Ghana Limited, C.S.(Comm. Div.) D.No.41401 of 2018,* in the High Court of Judicature at Madras; Date of Decision 4.12.2018. The contention of the plaintiff that the judgement/decree/order dated 8.8.2017 made by the U. K. Court, is in violation of Section 13 of the “The Code of Civil Procedure, 1908’ and placing reliance on Section 44-A of CPC. On the basis of that decree application u/s 7 of IBC was filed in NCLT Chennai. The NCLT admitted the application and declared moratorium against the corporate debtor. The appeal was filed in NCLAT. NCLAT in its order particularly in paragraphs 11 and 12 has clearly said that validity of foreign decree cannot be challenged before NCLAT and that it has to be done before an appropriate forum. The order was challenged in the Supreme Court, the Hon’ble Court held that it does not find any reason to interfere with the impugned order dated 29.8.2018 passed by the National Company Law Appellate Tribunal, New Delhi and dismissed the appeal. The Hon’ble High Court held that this suit to be not maintainable, but reserving the rights of corporate debtor

(second defendant) to approach to NCLT under section 60(5) if the IB Code and further reserving the right of Resolution Professional to file a suit on the same ground with regard to the same issue if the NCLT permits the Resolution Professional to do so.

## INSOLVENCY PROCEEDINGS IN TWO COUNTRIES

Insolvency proceedings is continued in India, wherein the registered office of the corporate Debtor (Company) is existed and in the another country where in the assets of the corporate debtor is existed. *In the matter of State Bank of India & Ors. Vs. Jet Airways (India) Limited u/s 7 & 9 o the I & B Code in CP 2205(IB)/MB/2019, CP1968 (IB)/(MB)/2019, CP 1938(IB)/MB/2019, NCLT Mumbai Bench: Date of order 20.06.2019. The Adjudicating Authority discussed that judgement of NOORD-HOLLAND, Netherlands District court dated 21.05.2019, neither submitted on affidavit nor the original/certified copy of the Judgement is submitted along with the translated copy. It is important to note that there is no provision and mechanism in the I & B Code, at this moment to recognise the judgement of an insolvency court of any Foreign Nation.*

So we cannot take the order on record (para 21). It is provided in contention of the Administrator regarding insolvency order passed by Holland Court, inter-alia in para 24(d) even though the provisions of law, Section 234 and 235 of the IBC have not been given effect to by the Central Government, there is no bar or prohibition under the IBC for the Adjudicating Authority recognising the Insolvency proceedings in a foreign jurisdiction.; in para (e) the provisions of sections 13, 14 and 44-A of the Code of Civil Procedure, 1908 do not apply to insolvency proceedings. They deal with the procedure of recognition an enforcement of foreign judgement/decreed/orders etc.; in para (f), the judgement dated 21 May 2019 has been passed by the court of competent jurisdiction is final and binding on the Corporate Debtor and lenders. Despite notice the corporate debtor and State Bank of India have to file any appeal against the judgement till date. It is stipulated in para (g) two parallel proceedings are likely to obstruct smooth and uninterrupted, sustainable and certain proceedings. (para-24, p-8).

It is pertinent to mention that Section 234-235 of the IBC, 2016 deals with the matter regarding the agreement with foreign countries and the letter of request to a country outside India in the insolvency Resolution Process where the assets of the corporate debtor exist outside India (para-26, p-8). The adjudicating authority discussed that the above provision of IB Code is yet to be notified, hence not enforceable. The Adjudicating Authority is not empowering to entertain the order passed by the foreign jurisdiction, where the registered office of the corporate debtor company is situated in India and the jurisdiction lies with Indian court (para-27).

The adjudicating authority admitted the petition u/s 7 of the Code for initiating corporate insolvency resolution proceedings and directed the interim resolution professional to proceed in the matter without being influenced by order of the Netherland.

*In the matter of Jet Airways (India) Limited (Offshore Regional Hub) Vs. State Bank of India & Anr., NCLAT New Delhi, Company Appeal (AT)(Insolvency) No.707 of 2019. NCLAT Date of decision.12.7.2019. The question arises for consideration in this Appeal is whether separate proceeding(s) in Corporate Insolvency Resolution Process against Common corporate Debtor in two different countries one having no territorial jurisdiction over the other. The Appellate Authority observed that separate Corporate Insolvency Resolution Process/liquidation proceedings have been initiated against same Corporate Debtor namely-Jet Airways (India) Limited, one in India where Registered office of the Corporate Debtor is situated and another in Netherlands (North Holland), where the Regional Hub of the Corporate Debtor is situated. A Joint Agreement or understanding between the Resolution Professional of Corporate Debtor in India and Administration from was made. In the same case the Appellate Authority vide its order dated 21.8.2019 held to ensure that insolvency proceedings both by Administrator, appointed by Netherlands (North Holland) court and Resolution Profession, appointed by state Bank of India is doing in the same spirit.*

*In the matter of Jet Airways (India) Ltd (Offshore Regional Hub/office) Holland Vs. State Bank of India & Anr. National Company Law Appellate Tribunal, New Delhi, Company Appeal (AT)(Insolvency) No.707 of 2019, Date of order 4.09.2019. The NCLAT ordered that in view of the duties empowered on the Interim Resolution*

Professional', he is required to collate the claim of all offshore creditors' or take control and custody of the assets of the corporate debtor situated outside India (in Holland) or other places, but for giving it effect the 'Resolution Professional' is required to reach an arrangement/agreement with the Administrator appointed pursuant to the proceeding initiated at Holland (para 4). In the same case of *Jet Airways (India) Limited* NCLAT New Delhi order dated 26.09.2019. Company Appeal (AT)(Insolvency) No.707 of 2019 it is observed that an agreement between the Administrator of Jet Airways (India) Limited and the Resolution Professional of Jet Airways (India) Limited, termed as "Cross Border Insolvency Protocol" to run the parallel proceedings. The Aim of the Protocol is the parties recognise that the Company being an Indian company with its centre of main interest in India, the Indian Proceedings are the main insolvency proceedings and the Dutch Proceedings are the non-main insolvency proceedings (para 3, p-5).

The NCLAT, therefore, made clear that the 'Dutch Trustee (Administrator) will work in cooperation with the 'Resolution Professional of India' and if any suggestion is required to be given, he may give it to the Resolution Professional. It should be treated as a direction and it would be mandatory to comply with the order of this Appellate Tribunal subject to the other procedures which are to be followed in terms of the Insolvency and Bankruptcy Code, 2016. Thus, the Appellate Authority set aside part of the order passed by the Adjudicating Authority so far it relates to the observations that the 'Dutch Court' has no jurisdiction in the matter of corporate insolvency resolution process of Jet Airways (India) Limited (Offshore Regional Hub) and the consequential directions given to the Resolution Professional in respect of offshore proceedings. The appellate authority allowed to continue joint insolvency Resolution Process in accordance with the I & B Code.

In view of above, the NCLAT New Delhi has also directed the Resolution Professional to take custody of the assets situated Neither land and receive claims of outside India. The registered office of the corporate debtor (company) is within India, therefore, corporate insolvency resolution process is to be carried out in India Therefore, it is required to make amendment in the law

In view of the above, the judgement, decree passed by foreign courts without complying with the provisions of section 13, 14 and 44A of CPC, 1908 have been made eligible to file application under Insolvency and Bankruptcy Code, 2016. The application for winding up on the basis of foreign judgement, decree have been admitted on passing the test of section 13, 14 & 44-A of CPC, 1908. of **reciprocating territory**. As well, it has held in *the matter of State Bank of India & Ors. Vs. Jet Airways (India) Limited* by Adjudicating Authority that it is important to note that there is no provision and mechanism in the I & B Code, at this moment to recognise the judgement of an insolvency court of any Foreign Nation. Section 234 and 235 of the IBC have not been given effect to by the Central Government. But the insolvency/liquidation proceedings in the case of Jet Airways (India) Limited (Offshore Regional Hub) is going in both countries. As against, there is no provision to initiate insolvency proceedings against a foreign corporate debtor for non-payment of debt existed in India. Therefore, it is required to be made Amendment in the Code to this effect.

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## TRANSACTIONING BY EXCEPTION: LISTED COS IN INDIA GIVE SUBSTANTIVE CARVE OUTS FOR RPTS



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Related Party Transactions ('RPTs') have an element of potential conflict of interest and that is the basic reason why all RPTs, including modifications thereof, are subject to prior approval of Audit Committee ('AC') that is a committee comprising of majority Independent Directors ('IDs'). IDs *inter-alia* are entrusted with the duty to pay sufficient attention and ensure that adequate deliberations are held before approving RPTs and assure themselves that the same are in the interest of the company. This article analyses the permissible exemption from approvals under applicable law for RPTs and appropriateness of various exceptions provided in the policy adopted by various companies; if there is any potential abuse of corporate governance norms.

### RPT POLICY REQUIREMENT

Companies having their specified securities listed on stock exchange are required to frame a policy on materiality of RPTs and on dealing with RPTs as per Reg. 23 (1) of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 ('Listing Regulations'). Further, such entities are required to disclose the same in the website [Reg. 46 (2) (g)] and provide a web-link of the policy in the Corporate Governance Report every year.

Systemically important Non-Banking Financial Companies as well as Housing Finance Companies are required to frame a policy on dealing with related parties and disclose the same on the website and in the annual report. Insurance Companies are also mandated by Insurance and Regulatory Development Authority of India (IRDA) to frame policy on RPTs.

### Hierarchy of approvals for RPTs

As per Listing Regulations every RPT requires prior approval of Audit Committee, which could be a specific or an omnibus approval (for foreseen and unforeseen transactions). Material RPT require approval of shareholders, with the related parties allowed to vote against the resolution but not in favor of the resolution.

Under Section 177 (4) (iv) of Companies Act, 2013 ('Act, 2013') every RPT requires approval of Audit Committee, which could be a specific or an omnibus approval (for foreseen and unforeseen transactions) or a subsequent ratification in certain cases within 3 months from the date of entering into a transaction. The Audit Committee evaluates an RPT from conflict of interest perspective as it is comprised of majority of IDs. Approval of Board for an RPT cannot exempt the requirement to obtain AC approval as the viewpoint of AC is different from that of the Board. Further, where an RPT is not approved or recommended by AC but approved by the Board, the same is required to be disclosed in the Board's report in terms of Section 177 (8) with reasons for not accepting any recommendation of the AC and even in the Corporate Governance report annexed in accordance with Listing Regulations.

Section 188 of Act, 2013 mandates prior approval of Board of Directors for items specified under clause (a) to (g) of Section 188 (1) except for RPTs entered into by the company in its Ordinary Course of Business ('OCB') and on an Arm's Length Basis ('ALB'). Where such RPTs are in excess of thresholds prescribed under Rule 15 of Companies (Meetings of the Board and its Powers) Rules, 2014 prior approval of shareholders is also required to be obtained, with the related parties

allowed to vote against the resolution but not in favor of the resolution<sup>7</sup>.

**EXEMPTION UNDER APPLICABLE LAW FROM APPROVAL OF RPTS:**

<b>APPROVAL FROM</b>	<b>ACT, 2013</b>	<b>LISTING REGULATIONS</b>
<b>AC</b>	Transaction, other than a transaction referred to in section 188, between a holding company and its wholly owned subsidiary company.	<ul style="list-style-type: none"> <li>• Transactions entered into between two government companies;</li> <li>• Transactions entered into between a holding company and its wholly owned subsidiary whose accounts are consolidated with such holding company and placed before the shareholders at the general meeting for approval.</li> </ul>
<b>Board of Directors</b>	Transactions entered in OCB and ALB.	N.A
<b>Shareholders</b>	<ul style="list-style-type: none"> <li>• Transactions entered in OCB and ALB;</li> <li>• Transactions entered into between a holding company and its wholly owned subsidiary whose accounts are consolidated with such holding company and placed before the shareholders at the general meeting for approval.</li> <li>• In case of a Government company, in respect of contracts or arrangements entered into by it with any other Government company, or with Central Government or any State Government or any combination thereof;</li> <li>• In case of a Government company, other than a listed company, in respect of contracts or arrangements other than those referred in the above item, in case such company obtains approval of the Ministry or Department of the Central Government which is administratively in charge of the company, or, as the case may be, the State Government before entering into such contract or arrangement.</li> </ul>	<ul style="list-style-type: none"> <li>• Transactions entered into between two government companies;</li> <li>• Transactions entered into between a holding company and its wholly owned subsidiary whose accounts are consolidated with such holding company and placed before the shareholders at the general meeting for approval.</li> </ul>

<sup>7</sup> Exemption from this restriction exists for companies in which ninety per cent. or more members, in number, are relatives of promoters or are related parties.

Apart from the exemptions provided in the table above, there is no exemption under applicable law for RPTs.

**The Report of the Working Group on RPTs<sup>8</sup>** constituted by SEBI the Working Group also considered excluding certain corporate actions which, by their very nature treat all shareholders equally, such as payment of dividend, sub-division or consolidation of securities, buy-back, rights and bonus issue of securities. Further, corporate actions which were subject to procedures specifically laid down by SEBI in its other regulations, such as preferential allotment, were also proposed to be kept outside the purview of RPTs.

**Accordingly, following exemptions were proposed to be inserted in Listing Regulations:**

- *the issue of specified securities on a preferential basis, subject to requirements under the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018 being complied with; and*
- *the following corporate actions by the listed entity which are uniformly applicable/offered to all shareholders in proportion to their shareholding:*
  - *payment of dividend;*
  - *subdivision or consolidation of securities;*
  - *issuance of securities by way of a rights issue or a bonus issue; and*
  - *buy-back of securities*

**Exceptions under RPT Policy**

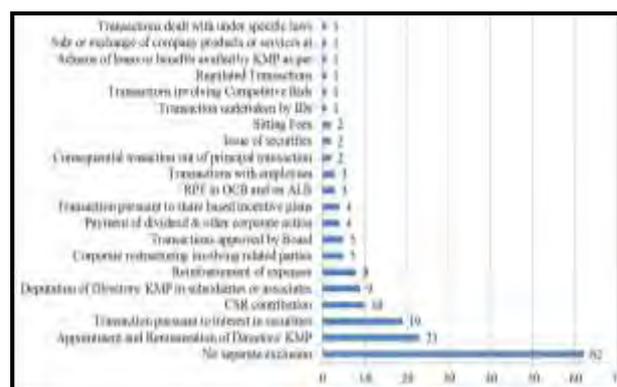
Apart from the exemptions granted under applicable law, companies exclude certain RPTs that are perfunctory or do not include any conflict of interest from the scope of the policy so as to ensure that the Audit Committee is able to focus on critical transactions and not review trivial RPTs. Eg. reimbursement of expenses, payment of dividend etc.

Analysis of exceptions under RPT policy

**We reviewed the exceptions provided in the RPT policy framed by 100 listed entities, as uploaded on its website.** While majority of companies did not have any separate exclusion in the policy, several listed companies have

<sup>8</sup> [https://www.sebi.gov.in/reports-and-statistics/reports/jan-2020/report-of-the-working-group-on-related-party-transactions\\_45805.html](https://www.sebi.gov.in/reports-and-statistics/reports/jan-2020/report-of-the-working-group-on-related-party-transactions_45805.html)

carved out certain kinds of RPTs, as explained in *Figure 1: Exclusions provided under RPT policy:*



*Figure 1: Exclusions provided under RPT policy*

The appropriateness and suitability of some of the aforesaid exclusions has been reviewed hereunder in the light of provisions of law.

**1. Appointment and remuneration of Directors/KMPs and deputation in subsidiaries or associate companies**

*Any transaction that involves providing of compensation to a director or Key Managerial Personnel, in accordance with the provisions of the Act in connection with his or her duties to the Company or any of its subsidiaries or associates, including the reimbursement of reasonable business and travel expenses incurred in the ordinary course of business.*

Appointment of directors and Key Managerial Personnel ('KMP') are recommended by Nomination and Remuneration Committee ('NRC'), approved by Board of Directors and approved by shareholders in case of appointment of director and manager.

From RPT perspective, the appointee becomes a related party upon appointment as director or KMP, unless the appointee is a relative of a director or KMP. Re-appointment of the director/ KMP or variation in the terms of appointment (including remuneration) results in modification of transaction with a related party, thereby requiring approval of AC under applicable law.

The rationale for placing the RPT before AC is to enable evaluation of terms of appointment (including remuneration) from a conflict of interest and office or place of profit perspective. Deputation of employees without any cost sharing or reimbursement, that are likely to result in burden to the Company and benefit to the subsidiaries or associates, should require sanction of Audit Committee as it results in

rendering of services to the group companies on terms that may not seem to be on ALB.

## **2. Transaction pursuant to interest in the securities of the company**

*Any transaction in which the interest of Related Party arises solely from ownership of securities issued by the Company and all holders of such securities receive the same benefits pro rata as the Related Party or other pro rata interest of a Related Party included in a transaction involving generic interest of stakeholders involving one or more Related Parties as well as other parties.*

This seems a valid carve out as there is no concept of interested shareholder. Right to receive dividend or interest, right to subscribe in rights issue, right to receive shares pursuant to bonus issue, split or consolidation etc., right to receive redemption amount is pursuant to holding of securities involving generic interest.

## **3. CSR contribution**

*Contribution towards Corporate Social Responsibility (CSR) within the overall limits approved by the Board that require approval of the CSR Committee.*

This cannot be regarded as a valid carve out as the CSR Committee approves the spending from CSR policy perspective and a company is not mandatorily required to spend the amount through its CSR arm only. The AC is required to evaluate from conflict of interest perspective, especially in cases where the amounts are not entirely spent by the related party responsible for carrying out CSR expenditure or where the amounts are being sanctioned without furnishing of utilization or monitoring report.

## **4. Reimbursement of expenses**

*Reimbursement made of expenses incurred by a Related Party for business purpose of the Company, or reimbursement received for expenses incurred by the Company on behalf of a Related Party. Reimbursement of pre-incorporation expenses incurred by or on behalf of a Related Party.*

Reimbursement of actual expenses does not have an element of income embedded in it. It is mere recovery of expenditure incurred at a common place and is merely a matter of logistic convenience. The term "reimbursement" has been provided with the following meaning in the Black's Law Dictionary: "Reimburse: To pay back, to make restoration to repay that expended; to indemnify, or make whole". Hence, reimbursement of expenses does not result in

any transaction as it does not lead to any burden or benefit and the same arises only for operational convenience and does not have any economic rationale unless reimbursement is being made with some margin on cost.

## **5. Corporate restructuring activities involving related parties**

*Transactions involving corporate restructuring, such as buy-back of shares, capital reduction, merger, demerger, hive-off etc. which are approved by the Board and carried out in accordance with specific provisions of the Companies Act, 2013 or the Listing Regulations, 2015;*

This seems a valid carve out. However, as per Regulation 37 read with SEBI Circular dated March 10, 2017 in case of a scheme of arrangement, there is a need to submit report from the Audit Committee recommending the Draft Scheme, taking into consideration, inter alia, the Valuation Report. Accordingly, the information will be required to be placed before the Audit Committee irrespective of whether the same involves a related party or not.

## **6. Transactions approved by the Board**

*Transactions that have been approved by the Board under the specific provisions of the Companies Act, 2013 e.g. inter-corporate deposits, borrowings, investments etc. with or in wholly owned subsidiaries or other Related Parties;*

This is not a valid carve out as the Board may grant an in-principle approval or delegate the power to committee to grant loans, make investments, make borrowings. The approval of Board is obtained under Section 179 and Section 186. However, the AC is required to evaluate from conflict of interest perspective<sup>9</sup>.

Section 177 (4) (v) mandates scrutiny of inter-corporate loans and investment by AC.

Para A (21) of Part C of Schedule II to Listing Regulations further requires reviewing the utilization of loans and/ or advances from/investment by the holding company in the subsidiary exceeding rupees 100 crore or 10% of the asset size of the subsidiary, whichever is lower including existing loans / advances / investments existing as on April 1, 2019.

<sup>9</sup> Read article on Guidelines for review by AC at <http://vinodkothari.com/2019/03/guidelines-for-review-of-loans-and-investments-by-audit-committee/>

## 7. RPTs in OCB and ALB

*Approval of Audit Committee/ Board of Directors/ Members under this Policy shall not be required if the transaction(s) is in the Company's ordinary course of business and the same is on an arm's length basis.*

It is not recommended to have such blanket exception for all RPTs in OCB and ALB. There is no such exemption provided under Act, 2013 or Listing Regulations to such effect. It is for the AC to determine if the RPTs are in the OCB and on ALB and evaluate from conflict of interest perspective.

However, certain listed entities comprising of Banks, in hospitality business, insurance sector, may consider excluding those transactions that are undertaken in OCB and on ALB without any conflict of interest i.e. regular course retail transactions as the same may result in AC to approve perfunctory transactions thereby losing sight of critical RPTs. A company should avoid bringing unimportant and innocuous items as a part of RPT approval that may deflect attention from more substantive items.

## 8. Recurring/ consequential transactions

*Recurring/consequential transactions flowing out of a principal transaction or arrangement for which the Audit Committee has granted its omnibus approval.*

This is a valid carve out if the principal transaction has already been approved by the Audit Committee. For Eg. if approval of AC has been granted for giving to loan to a related party, separate approval is not required to be obtained for receipt of interest on loan or repayment of loan.

## 9. Transactions with the employees of the company

*Facilities available or transaction entered into by the Company with all employees in general.*

This seems a widely termed carve out. The fact that similar facilities or transaction is extended to all employees provides a rationale for the RPT being in the OCB. However, the AC is still required to evaluate the transactions proposed to be undertaken from conflict of interest perspective. If the same is pursuant to share based incentive plan approved by shareholders, in accordance with Act, 2013 or SEBI (Share Based Employee Benefit) Regulations, 2014 the same may be excluded.

## 10. Issue of securities

*Issue of shares / securities to related party.*

This seems a valid carve out as Act, 2013 as well as SEBI Regulations provides the terms and conditions for issue of securities. Accordingly, issuance of securities to a related party should not require prior approval of Audit Committee if the issuance is as per the procedure provided under applicable law.

## CONCLUSION

The requirement under applicable law to place RPTs before AC is on account of the AC comprising of majority IDs, with the responsibility to ensure under Schedule IV to Act, 2013 that such RPTs are in the interest of the Company. The said responsibility should not be diluted by providing carve out under RPT policy unless the transactions are perfunctory or innocuous items not resulting in any conflict of interest for the listed entity.

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## CATALYST ROLE OF MSME SECTOR IN GROWTH OF THE ECONOMY



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### BACKGROUND:

Contribution for MSME's during the earlier Five-Year Plans After the independence of India, the first five plan 1951-55 focused on establishing industrial growth. Little importance was given to the SSI Sector in which there was small provision of Rs 5.2 crores, which was increased to Rs55.00 crores; of this Rs 10.00 crores was from Central Government and Rs 45 crores from the State Government. This stood increased to Rs26014 crores by the 12<sup>th</sup> five-year plan. From time to time there was continuous review and the government's focus went on to create necessary changes to enhance the role of the SSI sector by creating the required need based facilities, which in the opinion of the Government it was essential to create. For example, infrastructure for rural growth in the backward areas, was created by the Government, by establishing industrial estates. This would enable the SSI units to get all the facilities at one place

### FORMATION OF SPECIALIZED AGENCIES

It was also decided to start Industrial Training Centers in different streams to help the rural youth to develop skills and help the SSI Units to get suitable manpower. It was realized that it would be necessary to provide the necessary market support to the units, for which Government reserved certain items for manufacture and sale by SSI units only. This started with 5 items which grew over a period to 820 items. In order to help the SSI to market, the National Small Industries Corporation (NSIC) was incorporated as a Government company. State governments also incorporated

Small Scale Industrial Development Corporations (SSIDC) as government company. In order to provide finance and bridge the gap between the owner's contribution and loans provided by banks, subsidy schemes were introduced by the various state governments. State level financial corporations (SFCs) were also incorporated to provide term loans to procure plant and machinery. A nodal agency under one roof known as Udyog Mitra (Facilitators for industries) was also created. In order to help marketing of products state level corporations established offices in all the districts and sub district offices. The Central Government created CSPO & states created state purchase organizations for which rate contracts were finalized every year. Various items reserved for SSI were procured from these units by inviting tenders, finalizing rates & distribution of equitable orders. In the very big tenders floated by govt agencies and corporations, the SSI Units were pooled together, bids invited from them to finalize the mean rate. SSI Corporations participated in the tenders and then distributed the work amongst the participant SSI units.

### EASE OF FINANCE

Government also incorporated the Small Industries Development Bank of India (SIDBI) on 2<sup>nd</sup> April 1990 with the principal objective to promote financing & development of MSME & other SSI units engaged in such activities. SIDBI under the title SMILE assists by way of Soft Loan fund to MSME in manufacturing as well as in Service activities. It has also Equipment Finance scheme for purchase of equipment. It has also got trade finance schemes focusing on wholesale / retail traders. SIDBI is also managing Venture Capital fund to assist start-ups etc. The Government jointly with SIDBI also created the Credit Guarantee Fund Trust to enable MSMEs to get loans without collateral from lending banks. This fund guaranteed reimbursement of

any defaulted amount by MSMEs to the extent of 85 % of default amount up to 100 lakhs; this was linked to the viable projects. For this purpose, borrower had to pay Service fees.

For technology development / upgradation, a credit linked Capital Subsidy Scheme with a 15% Capital Subsidy was introduced. The Government also introduced a Cluster Development Program, so that under one roof all the infrastructure facilities were made available to the SSI units. To help the SSI units to get credit rating done, a division in National Small Industries Corporation (NSIC) was created so that through it, SSI credit rating could be done by agencies like the Credit Rating Information Services of India Limited (CRISIL), Credit Analysis and Research (CARE), Investment Information and Credit Rating Agency of India Limited (ICRA) etc. For this government subsidy of 75% or 40000, whichever was minimum, was introduced as one-time assistance during the first year.

## COMPANIES ACT 2013 AND OTHER ACTS

In order to facilitate the growth of the Micro, Small and Medium Enterprises (MSMEs), the Government allowed new types of companies to be incorporated under the Companies Act i.e. One Man Company, Producer Company, LLP's etc.

For the speedy recovery and timely payment of dues to MSMEs, enabling sections / rules were incorporated under the Companies Act making it obligatory to publish the list of dues of Rs 100000/ and above of MSME's in the Annual Report of the companies, to act as a deterrent

The Government also enacted the Delayed Payment of Interest Act to MSMEs. This was repealed after a new act known as the Micro, Small and Medium Enterprises Development Act (MSMED) Act of 2006 was notified from 5<sup>th</sup> October 2006.

For the Stimulus growth of MSME, initially the National Stock Exchange (NSE) created a separate platform/ window for listing of MSME's on the Stock Exchange. Later the Bombay Stock Exchange (BSE) also created a separate platform/ window for listing of MSMEs on the exchange. Provisions in the listing agreements of NSE & BSE were suitably

modified for easy & smooth listing and subsequent listing compliances

The Securities and Exchange Board of India (SEBI) introduced various provisions in the Issue of Capital and Disclosure Requirements (ICDR) regulations for ease of Initial Public offers by SSI units to ease their listing on the National Stock Exchange / Bombay Stock Exchange. The SEBI also introduced less rigorous compliance requirements under the Listing Obligations and Disclosure Requirements (LODR) Regulations, for these units.

## RECENT MEASURES BY THE MSME MINISTRY OF THE GOVERNMENT OF INDIA: -

CHAMPIONS TECHNOLOGY PLATFORM: - WEB PORTAL UNDER MSME MINISTRY: -

Creation of Harmonious Application of Modern Process for Increasing Output & national Strength (CHAMPIONS): - Technology platform / portal was created with a view to help MSME in the difficult situation in terms of finance, assist in availability of raw materials, labour permissions etc, to assist in capturing / identifying new opportunities in the field of manufacturing including medical items & accessories. Also to identify the sparks i.e. bright MSME's which/who can become national as well as international champions

The MSME Ministry reviewed the definitions of MSME which were hitherto linked to investment in plant & machinery. In the changed scenario, it became inevitable to consider turnover also, as startups MSMEs in the services sector play a significant role and contribute to the growth of economy. Considering this following new notification has been issued which will be effective from 1<sup>st</sup> July 2020:

**Micro:** - Investment in plant and machinery or equipment does not exceed Rs One crore & turnover does not exceed five crore rupees.

**Small:** - Where investment in plant and machinery or equipment does not exceed ten crore rupees & turnover does not exceed fifty crore rupees.

**Medium:** - Where investment in plant and machinery or equipment does not exceed fifty crore rupees & turnover does not exceed two hundred and fifty crores.

## REGISTRATION REQUIREMENTS

- Register with or without Aadhar Card
- PAN mandatory for companies and Limited Liability Partnerships (LLPs)
- Self-declaration with no certification requirement
- No supporting documents
- No fee and no physical signature
- With the above, the MSME can receive the Udyog Aadhar instantly and generally not later than 2 days

Do it yourself website [www.udyogaadhar.gov.in](http://www.udyogaadhar.gov.in) ensures simple hassle-free self-declaration. In continuation to its earlier notification referred above, government issued further notification on 26<sup>th</sup> June 2020 which enlightens the method of calculating the investment in plant & machinery, equipment turnover in services sector. It gives the detailed procedure in this regard. MSME Ministry has created new portal namely UDYAM. From 1<sup>st</sup> July 2020 MSME's desirous to register under any of the category must register on UDYAM portal. It has also issued detailed guidelines for the purpose of enabling the existing units for compulsory switch over to UDYAM Portal.

## MSME - SOME FACTS

As per the survey taken in 2016 there were 6.3 crore MSME's in India comprising of manufacturing & service sector. They created 11 crore jobs equitably created by manufacturing, service & trading. MSMEs contribute about 30% of India's GDP. MSMEs also play a lion's role by contributing almost 50% of total exports from India.

Under the provisions of MSME Act 2006 by April 2020 1.33 crore MSME's have registered. Benefits available to MSME's from MSME ministry has more than 30 schemes under SAMADHANN, SAMBANDH, SAMPARK etc. as highlighted below: -

**Samadhaan:-** This covers the delayed payment as defined under MSME Act 2006. Units must make an application bringing to the notice the grievance of non-receipt of dues much after they have fallen due. In 2018-19 government has settled approximately 3346 nos and amount released is 642.46 crore rupees.

**Sambandh:-** This portal highlights the procurements, purchases of material, services etc. by Central Govt ministries/ central government departments, Central Public Sector Undertaking (CPSE) 126. CPSE'S procured/purchased amounting to 125265.38 crores during 2019-2020 from MSME 's

**Sampark:-** It is a MSME placement portal. Through this portal companies engaged in manufacturing services, from Mahindra & Mahindra, VIP industries, CAPEGEMINI, BOSCH etc. have provided employment to qualified trainees/ persons. Technology center for trainees.

RBI Priority Sector Lending through banks, Interest subvention scheme, liberalized provisioning & debt restructuring etc. As per the various guidelines, circulars issued by RBI which are mandatory, Banks, NBFC's, MFS disburse the loans which are categorized under priority sector lending which gives various benefits in terms of rate of interest, margin money, repayment etc. Under the interest subvention scheme the eligible MSME's are benefited by way of subsidized rate of interest. RBI has also devised various schemes for hassle free debt structuring.

**MCA:** It oversees and implements various provisions under the Companies Act, Rules made thereunder, clarifications issued from time to time. Under this it made mandatory for MSME dues reporting, and disclosure in all accounts. It also has framed various rules for fast track closure of companies.

**Ministry of Finance: - Tax related benefits and exemptions: -** Under the provisions of Income Tax Act large no of benefits are offered. Expenditure incurred for scientific research and development gets rebate covered under business expenditure,

Under the under Central laws of GSTN, Customs etc. various benefits are extended.

**Atma Nirbhar Bharat joint initiative of MOF / MSME: -** Ministry of MSME & Ministry of Finance have announced various incentives. Schemes providing huge funds to be disbursed under various categories/ schemes. State Governments offer various incentives in the form of stamp duty exemption/ reduced stamp duty, clustered development, common chemical effluent plant, concessional electricity tariffs wherever applicable. Large number of benefits are available to MSMEs under various schemes,

which are reflected in the MSME portal and not reproduced here,

## **NEWLY ANNOUNCED ATMA NIRBHAR BHARAT BENEFITS TO MSMES**

Emergency credit limit of Rs 3.00 crores available to borrowers fulfilling conditions. Interest to be capped at 9.25 % for banks and 14% for NBFC's Subordinate Debt to NPA's/Stressed MSME Rs 20000 crores Equity Infusion from funds- funds 50000 crores Global Tender being disallowed for orders up to 200 crores MSME receivables from Government and Central Public Sector enterprises to be released in 45 days. This is applicable to state government enterprises as well Law also stipulates and covers companies / private sector also Digital data-based Credit Rating System 24\*7 custom clearance till 30<sup>th</sup> June 2020 Statutory P.F contribution will be reduced to 10% by both employer and employee from 12 % for all establishments covered under EPFO for 3 months TDS & TCS reduced by 25% of the existing rate Immediate refund of tax to all. Extension of time for filing & payment of taxes compliance under Income Tax Act

## **IMPORTANT ROLE PLAYED BY MSMES FOR THE GROWTH OF THE ECONOMY:**

MSME have a crucial role to play in equitable development of India. They play a significant role in creating huge employment at comparatively lesser cost of capital vis-à-vis large industries. From a small beginning in the first five-year plan, the MSMEs have slowly played a significant role of providing employment to an estimated 12 crore persons involving around 36 crore units spread all over the country. It has contributed around 6.11% of GDP in manufacturing sector and 24.63 % of GDP in services sector as of July 2019. From a moderate 5.86 % of GDP in 1990 -91 it has grown substantially to 28.90 % in 2016-2017 & to 30.74% by July 2019 (with every census the base year for arriving at GDP have been changed) \*\* source MSME Ministry Annual Reports.

## **ROLE OF COMPANY SECRETARY (CS) IN EMPLOYMENT**

Company Secretaries play a very vital role in employment where Small Scale Industrial

Development Corporations (SSIDC) offer turn key solutions for setting up of MSME. This involves identifying of place, preparation of feasibility / viability project reports, arranging for funds, subsidies, preparation and submitting consortium loan applications for working capital term Loan, working capital loan, raw material supplies/ vendor coordination, etc.

## **ROLE OF COMPANY SECRETARY (CS) IN PRACTICE**

A Company Secretary in Practice can assist in setting up MSME Enterprises, preparation of project report, one window turnkey solution for all requirements. As crowd funding is not a solution all the time, long sustainability finance from banks, SIDBI etc needs to be arranged.

Under the one roof Consultancy solution, the SME can be offered the services of turnkey nature involving all the services, finance corporate law, company laws, Securities laws etc. PCS can give the consultation for preparation of Draft red herring prospectus, required to be submitted to SEBI, which is prerequisite for making IPO, for services for identifying the appropriate companies to act as merchant bankers, bankers to issue, etc. Post IPO services for Listing of security on Stock Exchanges

Advisory role in all Securities Laws, Industrial & Labour Laws, PF, ESI Laws, Trademark, Patent IPR laws, Consumer Protection laws, FASSI regulations Food & Drug Administration, DPCO laws, etc. Thus, it can be concluded that a Company Secretary will play a very vital role in the current cloud computing, machine learning & digital environment

## **REFERENCES: / BIBLIOGRAPHY**

- 1) Web site of Planning Commission <http://planning.commission.nic.in/plans> /five year
- 2) Web site of Small Industries Development Bank of India (SIDBI):-[www.sidbi.in](http://www.sidbi.in)
- 3) (a) Website of MSME ministry / UDYAM/SAMADHAN/SAMANDH/SAMPARK portal:-[www.msme.Gov.in](http://www.msme.Gov.in)
- 3)(b) [www.champions.gov.in](http://www.champions.gov.in) /[www.egtmse.in](http://www.egtmse.in) Website Technology platform under Ministry of MSME
- 4) <http://newsonair.nic.in/Main-News> and <https://m.dailyhunt.in/news/india/english/your-story>

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## COVID19 AND CORPORATE GOVERNANCE – A LOOK AT GLOBAL MEASURES



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### INTRODUCTION :

As old English proverb goes: ***Necessity is the mother of invention, so does threat give rise to opportunity.*** With the COVID pandemic, both regulators and professionals across functions, geographies, industries and businesses have devised new ways and means of continuing to comply with regulations and governance. What are the new measures, how did they fare in achieving the desired objectives, are such measures good for short term only or they have merit in long term as well and what are the learnings from such measures? All this and more, lets discuss in this article.

Company Law in India is the cherished child of the English parents. Our various Companies Acts have been modelled on the English Acts. Following the enactment of the Joint Stock Companies Act, 1844 in England, the first Companies Act was passed in India in 1850. With this background, for this article, I have set a comparator of two countries: India and UK

NATURE OF MEASURE	INDIA	UK	ANALYSIS / REMARKS
Filing of accounts	In India accounts are filed post AGM. With the extension in 60-day period for Board meetings etc filing of accounts fortunately does not fall with the crises period.	Public companies are required to file their annual audited accounts with Companies House within six months of the end of their financial year. Companies House announced on 25 March 2020 that businesses can apply for three-month extension for filing their accounts. Companies will need to apply, but those citing issues around COVID-19 will automatically be granted an extension.	While, for India it is still time to think about exemptions specifically for Annual filings, MCA vide its circular dated 24 March 2020 titled Special Measures under Companies Act, 2013 (CA-2013) and Limited Liability Partnership Act, 2008 in view of COVID-19 outbreak has clarified that no additional fees shall be charged for late 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 Registry, irrespective of its due date, which will not only reduce the compliance burden, including financial burden of companies/ LLPs at

NATURE OF MEASURE	INDIA	UK	ANALYSIS / REMARKS
			large, but also enable long-standing non-compliant companies/ LLPs to make a 'fresh start'. This circular is all encompassing from crises period stand-point. UK's provision to automatically grant extension is a noteworthy feature.
Annual General Meetings	<p>In case of companies whose financial year has ended on 31 Dec 2019, MCA has permitted additional 3 months to hold the AGM i.e. by 30 Sept. In case of companies whose financial year has ended on 31 March 2020 as per normal regulation have time till 30 Sept. So, while extension of time is not required, MCA had to address issues around physical attendance via a vis Video Conferencing (VC) or other audio-visual means. MCA has permitted the same even for adoption of accounts which in normal course is not permitted by VC. Guidelines also stipulate other than ordinary business, only those items of special business, which are considered unavoidable by the Board, may be transacted. SEBI vide various circulars issued in March for Relaxation under LODR Regulations has extended the due date for holding the annual general meetings of the top 100 listed companies by market capitalization (determined as of 31 March of each financial year) from August 31, 2020 to September 30, 2020.</p>	<p>Virtual and hybrid AGMs UK Companies could consider holding a virtual AGM, by which there is no physical meeting and all shareholders join by electronic means and exercise their shareholder rights electronically. However, a company would require clear authority under its articles of association to hold a virtual AGM and few companies currently have that authority in place. To date, investor bodies have generally been opposed to the use of virtual-only AGMs and additional procedural and technical hurdles involved in doing so have been off-putting for all but a few companies. Similarly, a hybrid AGM, involving both a physical meeting with the option for shareholders to attend either physically or remotely (e.g. via phone or using online meeting tools), may be possible as and when the Stay at Home Measures are relaxed for all or some of the population. Investor groups have been generally more relaxed about the use of hybrid general meetings and have noted the possibility of using hybrid AGMs to increase investor participation in company decision making. A hybrid AGM must also be permitted under a</p>	<p>While MCA has permitted extended timeline for AGMs to be held by VC and other similar means during the calendar year, it had earlier not matched the requirement for Board meetings considering adoption of accounts beyond June 2020 to approve by VC or OAV means. The extension until 30 Sept 2020 was granted for Board meeting in MCA notification dated 23 June 2020, providing relief to Companies.</p>

NATURE OF MEASURE	INDIA	UK	ANALYSIS / REMARKS
		<p>company's articles, but a proportion of companies have already amended their articles for this purpose.</p> <p>To give an example SCPLC updated an announcement with regard to its AGM and informed the shareholders that the AGM venue was moved from large hall to company registered office and that shareholders were asked NOT to attend the meeting in person but vote in advance. They also mentioned that during the year shareholder call will be arranged as an opportunity for them to ask questions to shareholders.</p>	
Dividend	<p>MCA has not issued any circular to requesting companies to cancel dividend plans, unlike IRDA, the insurance regulator who has directed insurers not to pay dividend for the financial year 2019-20 to ensure that they have adequate capital and resources available with them to ensure protection of the interests of the policyholders.</p>	<p>Under the Dividend Procedure Timetable 2020, companies are required to pay cash dividends within 30 business days of the record date. As a result of market conditions, London Stock Exchange announced on 25 March 2020 that it will permit a deferral of up to 30 business days for a payment of a dividend, but no more than 60 business days after the record date.</p> <p>Companies must inform the Stock Situations Team of any deferral of a dividend payment without delay.</p> <p>PRA set out supervisory expectation that banks should suspend dividends and buybacks until end-2020.</p>	<p>In India, as the financial year ends on 31 March, as such Board meetings / AGM to discuss dividend proposals do not fall within the lockdown / crises period. However, it is a reasonable option to consider providing deferral to Indian Listed Companies, in case they wish to declare dividend but pay beyond 30 days but within 60 days, to align cash flow position etc.</p> <p>With PRA setting the expectation, Lloyds, RBS, Barclays, HSBC, Santander and Standard Chartered bowed to the regulatory request given the unique role that banks need to play in supporting the wider economy through a period of economic disruption, alongside the extraordinary measures being taken by the authorities.</p>
	AASB of ICAI issued other Auditing guidance on COVID-19 during March /	The FRC has in March 2020 issued guidance which highlights some key areas of	While in India companies do not have separate strategic report, FRC

NATURE OF MEASURE	INDIA	UK	ANALYSIS / REMARKS
Strategic report and viability statement	<p>May 2020. It recognises management’s responsibility and includes making appropriate adjustments to the financial statements and ensuring necessary disclosures, such as disclosures of subsequent events, risks and uncertainties, and how events and conditions may impact future operating results, cash flows and financial position of the entity. Other disclosures may include business risk factors and management’s discussion and analysis of results, liquidity and capital resources.</p> <p>Auditors as well must comment at various places including in Including an Emphasis of Matter Paragraph in the Auditor’s Report as follows: “Emphasis of matter – Effects of COVID-19 - We draw attention to Note X in the financial statements, which describes the economic and social [consequences/disruption] the entity is facing as a result of COVID-19 which is impacting [supply chains / consumer demand/ financial markets/commodity prices/ personnel available for work and or being able to access offices]. Our opinion is not modified in respect of this matter.”</p> <p>SEBI taking a cue from global practices being adopted, issued a circular on 20 May 2020 to listed entities, DPs and SEs entities are encouraged to evaluate the impact of the CoVID-19 pandemic on their business, performance and financials, both qualitatively and</p>	<p>focus for boards in maintaining strong corporate governance and when preparing their annual report and other corporate reporting. Viability statement – the Code asks boards to state that they have a “reasonable expectation” of the company’s viability over the period of assessment – during the current emergency and unprecedented pace of change, any reasonable level of expectation would naturally carry a much lower level of confidence. Disclosures should be clear on the company’s specific circumstances and the degree of uncertainty about the future is important information and draw attention to any qualifications or assumptions as necessary. At this time, the need for fuller disclosure is paramount.</p>	<p>introduced strategic report in 2014 to provide shareholders with a holistic and meaningful picture of an entity’s business model, strategy, development, performance, position and future prospects.</p> <p>It is satisfying to note that while separate strategic report as a concept is not introduced in India, Annual report disclosure requirements in response to crises is in sync with main aim to let shareholders and other stakeholders know the present and future impact on business, company and thereby shareholder wealth.</p> <p>SEBI also introduced the requirement of COVID impact reporting just in time when listed companies would be in the process of finalising the accounts and annual report. Best practices are being shared and followed and this is good example in this context.</p>

NATURE OF MEASURE	INDIA	UK	ANALYSIS / REMARKS
	<p>quantitatively, to the extent possible and disseminate the same. SEBI has provided an illustrative list and asked listed entities to specify/include the impact of the CoVID-19 pandemic on their financial statements, to the extent possible.</p> <p><b>SEBI circular ref: SEBI/HO/CFD/CMD1/CIR/P/2020/84 dated 20 May 2020.</b></p>		
Board meetings	<p>The mandatory requirement of holding meetings of the Board of the companies within the intervals provided in section 173 of the Companies Act, 2013 (CA- 13) (120 days) extended by a period of 60 days till next two quarters i.e., till 30th September. Accordingly, as a one-time relaxation the gap between two consecutive meetings of the Board may extend to 180 days till the next two quarters, instead of 120 days as required in the CA-13.</p>	<p>There is no general statutory requirement for the board of a Dutch company to meet at a specific interval. As such, board meetings can be postponed or cancelled in view of the COVID-19 related travel restrictions. In certain cases, however, board decisions cannot be postponed, then the Board may resort to use of electronic means of communication, provided all participating board members can communicate with each other in real time (i.e. Skype or a conference call) or by circular resolutions.</p>	<p>In India MCA has provided extension of time by relaxing the gap between two meetings but not permitted audio only meetings. Hence, it is likely that Companies which conduct meetings during May / June may face video recording issues. if the Board members are scattered across locations. MCA could have accepted audio only for June quarter meetings. Even if meetings are held through Skype etc the Video recording functionality is a challenge due to Company related data security policies.</p> <p>In UK, as the regulation does not require recording of meetings as a regulatory requirement, it is relatively easy to conduct Board meetings during these challenging times.</p>
Central Banks package for COVID 19	<p>On March 27, 2020, to mitigate the impact of COVID-19 on the financial market, the Reserve Bank of India (the "RBI") announced a regulatory package (the "Regulatory Package"). Among other measures, the Regulatory Package allows for a specific moratorium on the repayment of debt,</p>	<p>In early March, Bank of England announced through the MPC reduction in Bank Rate and launched new Term Funding Scheme with additional incentives for SMEs. FPC to support further the ability of banks to supply the credit needed to bridge a potentially challenging period, FPC reduced the UK</p>	<p>While both the Central Banks provided economic relief to NBFCs, SMEs, and in fact RBI extended the moratorium on loan repayments till August 31. However, analysts were expecting the central bank to come up with a proposal for one-time restructuring of loans and allow some</p>

NATURE OF MEASURE	INDIA	UK	ANALYSIS / REMARKS
	<p>relaxation of certain norms for working capital facilities, and infusion of liquidity into the financial market.</p> <p>The RBI has permitted all commercial banks, including regional rural banks, co-operative banks, all-India financial institutions, non-banking finance companies ("NBFCs") and housing financing companies (together, the "Financial Institutions") to grant a moratorium for up to 3 months on the payment of all principal, interest and repayment instalments between March 1, 2020 and May 31, 2020 ("Moratorium Period") to their borrowers ("Moratorium"), for all term loans, including credit card dues. For working capital facilities sanctioned as cash credit or overdraft facility, the RBI has permitted the Financial Institutions to grant a moratorium only on the payment of interest during the Moratorium Period.</p>	<p>countercyclical capital buffer rate to 0% of banks' exposures to UK borrowers with immediate effect. The rate had been 1% and had been due to reach 2% by December 2020. The release of the countercyclical capital buffer will support up to £190 billion of bank lending to businesses which is equivalent to 13 times banks' net lending to businesses in 2019.</p>	<p>respite to banks in terms of not having to mark to market (MTM) their held-to-maturity (HTM) portfolio.</p>

The circumstances are uncertain and hence the governance professionals should keep under review all announcements by government, regulators, conduct early stage analysis of the upcoming compliances so as to alleviate risk and to ensure compliance with their duties and legal obligations.

**Glossary:**

FRC - Financial Reporting Council

AASB - Auditing and Assurance Standards Board

ICAI - The Institute of Chartered Accountants of India

DP - Depository Participant

SE - Stock Exchange

MPC - Monetary Policy Committee

FPC- Financial Policy Committee

PRA- The Prudential Regulatory Authority

IRDA- Insurance Regulatory and Development Authority of India

SCPLC - Standard Chartered PLC

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## IBC CORNER



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In this month's edition, we bring you a discussion of right of entities incorporated outside India to initiate action under IBC and some important judgments related to the Code.

### FOREIGN ENTITIES INITIATING INSOLVENCY PETITIONS IN INDIA UNDER IBC

The question for consideration is: Whether a foreign entity can file a petition under Section 7/9 of the Insolvency and Bankruptcy Code, 2016 to initiate Corporate Insolvency Resolution process ?

#### DISCUSSION:

A bare interpretation of the Code suggests that Indian as well as Foreign entities are entitled to file insolvency proceedings in India against a defaulting entity. The Code merely bifurcates the Creditors into two categories, namely, Financial and Operational. The term 'Creditor' for the purpose of the Code means "**any person to whom a debt is owed and includes a financial creditor, an operational creditor, a secured creditor, an unsecured creditor and a decree-holder**". Similarly, a 'debt' under the Code means "**a liability or obligation in respect of a claim which is due from any person and includes a financial debt and operational debt**".

Furthermore, a Financial Creditor as defined under the Code means "**any person to whom a**

**financial debt is owed and includes a person to whom such debt has been legally assigned or transferred to**". An Operational Creditor means "**a person to whom an operational debt is owed and includes any person to whom such debt has been legally assigned or transferred**".

Thus, it can be seen from the aforementioned definitions that the primary focus is on the kind of default made to the Creditor by an entity, and not the origin of the Creditor. The jurisdiction of the NCLT for the purposes of Insolvency proceedings stems from the place of the Corporate Debtor's registered office, as mentioned in Section 60(1) of the Code, and the same is unconcerned with the origin of the creditor.

The Code nowhere categorically excludes foreign entities from filing insolvency petitions.

From the above it can be concluded that there is no geographical bar on the creditor for initiating action under section 7 and 9 of the IBC. This view is confirmed by the Hon'ble NCLT in the following case:

Forever Glory Trading Limited Vs Global Power Source (India) Limited.

In this case, Forever Glory being an operational creditor had filed an application u/s 9 of the Code owing to a default by Global Power Source (India) Ltd.

The Operational Creditor/Petitioner being a company incorporated under the laws of Angilla, dealt with the business of supplying batteries to clients at a global level. It was the Petitioner's case that the Corporate Debtor had failed to make payments towards certain Purchase orders, hence the application was filed. Further, based on the warranty agreement, certain invoices were agreed to be settled against the Corporate Debtor's warranty claim.

On the other hand, the Corporate Debtor contended that there were ongoing disputes between the two parties since March 2017 with respect to the warranty claim, as the Petitioner refused to acknowledge the same and set off.

The Corporate Debtor strongly contended that as the Petitioner is a foreign entity, it is disallowed to file a petition under the provisions of the Insolvency and Bankruptcy Code, 2016.

Dealing with the second issue put forth by the Corporate Debtor, the NCLT placed strong reliance on Sections 3(23)(g) and 3(25) of the Code-

***Section 3(23)(g) - "person" includes any other entity established by a statute and includes a person resident outside India***

***Section 3(25) - "person resident outside India" means a person other than a person resident inside India***

In view of the above definitions and intent of the legislators to include persons resident outside India in the ambit of the Code, the NCLT, Mumbai Bench vide order dated 03 June 2020 admitted the Section 9 application filed by the Operational Creditor.

**Reference:** <https://nclt.gov.in/sites/default/files/Feb-final-orders-pdf/Forever%20Glory%20Trading%20Limited%20C.P.%203735-2018%20NCLT%20ON%2003.06.2020%20FINAL.pdf>

## RECENT CASES ON INSOLVENCY AND BANKRUPTCY CODE 2016

### 1. **Sushil Kumar Aggarwal RP of DIGIAM Ltd. v/s. Suspended Board of Directors of DIGIAM Ltd. And ors.**

**Case citation / Writ petition :** C.P.(I.B.)No.594/NCLT/AHM/2018 in IA 144 of 2020

**Decided on:** 27 May 2020

**Order passed by:** Hon'ble Ms. Manorama Kumari, Member Judicial; National Company Law Tribunal, Ahmedabad Bench through Video Conferencing

#### **Facts in brief:**

This is an application filed by the Resolution Professional of the Corporate Debtor, namely, M/s Digiam Ltd. u/s 30(6) of the Insolvency and Bankruptcy Code, 2016 for the approval of the Resolution Plan. In this case, an application was filed by M/s Oman Inc. (HUF) u/s 9 of the Insolvency and Bankruptcy Code, 2016 against the Corporate Debtor. The said application was admitted on 26 April 2019 and the RP was appointed. The RP performed his duties under the provisions of the Code like making public announcements, constitution of committee of creditors, invitation, verification and admission of claims, etc as per due procedure of law.

In the seventh COC held on 27 December 2019, two proposed Resolution Applicants, namely, (i) M/s Finquest Financial Solutions Private Limited (Respondent No. 3 herein) and (ii) Donear Industries Ltd. had submitted their resolution plans, which were discussed in the meeting. In the twelfth COC held on 11 February 2020, the Resolution plan submitted by Respondent No. 3 was approved by the COC with hundred percent majority. The Resolution Applicant - Respondent No. 3 filed an affidavit dated 29 April 2020 for certain revision/modification/ relaxation in the Resolution Plan in respect of the time frame for payment to Financial and Operational Creditors, as also other stakeholders, due to the financial stress on account of the pandemic and lockdown. The NCLT directed Respondent No. 3 to approach the COC with the revised conditions and time was given to the COC, to file their terms, on or before, 14 May 2020. Out of the two financial creditors, UCO Bank accepted the revised plan in respect of the timeline for payment, without any conditions. However, the other member of the COC, namely SBI, partially agreed for concession in the time frame of payment, however, refused

to grant any relaxation in time line for payment towards 2nd Tranche.

**Issue:**

Whether a Resolution Plan is bound to be rejected on grounds of relaxation in time line of payment by the Resolution Applicant, in view of the pandemic?

**Judgment:**

The Tribunal held that there was no material change in the Resolution Plan except the modification / concession / relaxation in respect of time line of payment to the stakeholders. The concession sought for, was held to be genuine and bonafide in view of the pandemic and nationwide lockdown declared in the country. The relaxation in timeline is not going to change the nature and character of the Resolution plan, which was approved by the COC members with a majority. The Tribunal held that the very object of IBC is “*Resolution is the rule and Liquidation is an exception*”. Liquidation brings the life of a corporate to an end. It destroys organizational capital and renders resources idle till reallocation to alternate uses. Further, it was held to be inequitable as it considers claims of only a few stakeholders, if there is any surplus left after satisfying the claims of a prior set of stakeholders. Therefore, the aim is to disallow liquidation directly. Accordingly, the Resolution Plan with the modified time line for payment submitted by the Resolution Applicant was allowed by the Tribunal.

**Reference:**<https://ibbi.gov.in/uploads/order/c0aac745e2444452eec0ceacb7016b22.pdf>

**2. Asset Reconstruction Company (India) Ltd V/s M/s. Paragon Steel Private Limited**

**Case citation / Writ petition :**  
CP/553/(IB)/CB/2017

**Decided on:** 15 September 2017

**Order passed by:** K. AnanthaPadmanabha Swamy, Member (J) ; National Company Law Tribunal, Chennai Bench

**Facts in brief:**

Asset Reconstruction Company (India) ltd is the Petitioner/Financial Creditor in the present Company Petition, who under an assignment

agreement with the City Union Bank Limited was assigned to disburse loan to the Respondent/ Corporate Debtor, M/s Paragon Steel Pvt ltd. The assignment carries all the rights, titles, interests, pledges and guarantees in respect of the said loan.

The Corporate Debtor had submitted financials to Petitioner for final settlement of loan to a sum of ₹ 75 Crores in respect of all the loans availed. The Petitioner accepted the settlement request on the condition that upfront payment of ₹ 10.20 Crores to be made on or before 31 March ,2016 and the sanction letter will be issued after the receipt of such payment.

The Corporate debtor did not comply with the terms and conditions as a result of which the Petitioner did not issue a Sanction letter against the loan to the Corporate Debtor. The petitioner after informing the Corporate Debtor about the failure of restructuring scheme, proceeded to recovery of the loan amount and interest thereon which fell due on 30.04.2017. Since the Corporate Debtor was unable to pay its financial debt, the petitioner had no other option but to approach the Adjudicating Authority in the capacity of Financial Creditor and pray for initiation for Corporate Insolvency Resolution Process against the Corporate Debtor. The learned counsel for the Respondent/Corporate Debtor argued that the application be dismissed on various grounds of technical laches , serious defects and calculation errors. He stated that the asset held as security by the financial creditor, the value of which had to be mentioned in Clause 1 of part V of Form I, was totally omitted and excluded from the valuation submitted by the financial creditor and that a real estate ground which was granted on lease to the corporate debtor , was incapable of alienation yet was mentioned as own land in Form I. He further submitted that the mandatory requirement of serving the notice of the application to the financial creditor under Rule 4 of the IB rules , 2016 was not complied with. He also submitted that if the application was admitted, the Adjudicating Authority shall provide appropriate directions to preserve the value of the undertaking and that to permit the continued involvement of promoters in operations of the company is imperative with reference to Sec 20 of the Code. In this regard , he made reference to *ICICI Bank Limited v/s S.R.Foils and Tissue Limited (07.08.2017-NCLT-Principal Bench )*. To this , no objection was raised by the learned counsel of Petitioners instead submitted that specific directions to IRP maybe decide appropriately and that all the requirements as stipulated under the code and

the rules thereon are complied with for the application.

**Issues:**

Whether technical lashes in the application for CIRP amount to dismissal of the process?

**Judgment:**

The Adjudicating Authority was satisfied through all the evidences that the default had occurred and that the corporate debtor was responsible to pay it. The objections as regard to technical lashes were laid down and the commencement of CIRP was ordered with moratorium. It was further ordered that supply of essential goods or services of the Corporate Debtor shall not be terminated, interrupted or suspended during the moratorium period. The IRP was further order to preserve and protect the value of the property of the Corporate debtor as a going concern as regards to the obligations imposed by Sec 20 of the Code.

**Reference:** [https://ibbi.gov.in/webadmin/pdf/order/2017/Nov/15th%20Sept%202017%20in%20the%20matter%20of%20Paragon%20Steel%20Private%20Limited%20CP-553-\(IB\)-CB-2017-2017-11-02%2015:34:53.pdf](https://ibbi.gov.in/webadmin/pdf/order/2017/Nov/15th%20Sept%202017%20in%20the%20matter%20of%20Paragon%20Steel%20Private%20Limited%20CP-553-(IB)-CB-2017-2017-11-02%2015:34:53.pdf)

3. **Mr Srikanth Dwarakanath,**  
**Liquidator of Surana Power Limited – In**  
**Liquidation V/s. Bharat Heavy**  
**Electricals Limited**

**Case citation / Writ petition :**CA (AT)  
(Insolvency) No. 1510 of 2019  
**Decided on:** 18 June 2020

**Order passed by:** V. P. Singh, Member (T) ;  
National Company Law Appellate Tribunal, New Delhi

**Facts in brief:** The NCLT, Chennai had admitted the initiation of Corporate Insolvency Resolution Process u/s 9 of IB Code for Surana Power Limited (hereinafter referred to as “Corporate Debtor”) vide its order dated 20 January 2019. Corporate debtor was ordered to be liquidated since no resolution was approved. Accordingly Mr. ShrikanthDwarakanath (hereinafter referred to as “ Liquidator/ Appellant) was appointed as the Liquidator for Corporate Debtor. During the said liquidation period, Bharat Heavy Electricals Limited ( hereinafter referred to as “Operational Creditor/Respondent”) succeeded with an ex parte award in an arbitration proceeding against the Corporate Debtor ; wherein the Respondents

were granted lien over equipment and goods lying in the site of the Corporate Debtor and charge over its facilities was created. The said secured assets were already hypothecated to all the Secured Creditors.

All the other Secured creditors had relinquished their security interest holding value of 73.76% of the secured assets into the liquidation estate, but the respondent informed its unwillingness. Further sale of asset was not possible unless relinquishment of security interest is received from all the secured creditors to whom the assets are charged. As regards to the same, the liquidator filed MA 1052/2019 with the Adjudicating Authority to seek permission to sell assets of the Corporate debtor which was rejected by the Adjudicating Authority. Aggrieved by it , an appeal was made on the grounds that the Adjudicating Authority failed to appreciate ten out of eleven secured creditors by not treating every secured creditor on the same footing. The unwillingness of the Respondent turned out to be an obstacle in the Liquidation process.

The respondent contended that it exercised its unqualified and unbridled right u/s 52 of the code, and that this right cannot be subjected to majority of the secured creditors.

To enable the Liquidator to proceed under Regulation 32 of the IBB (Liquidation Process), Regulations, 2016 and dispose of the assets of the Corporate Debtor, all the Secured Creditors shall have relinquished their Security Interest to the liquidation estate to the Corporate Debtor. But due to the refusal by the Respondent the Liquidator cannot do so and has created a deadlock situation in the process. It was held by the Adjudicating Authority that Respondent's lien has preference over the charge created in favour of the remaining Secured Financial Creditors, which the Appellant contended to be violative of the waterfall mechanism provided u/s 53 of the Code. During the pendency of this appeal, the respondent notified their intention to realize the Security Interest concerning the Secured Asset.

**Issues:**

Whether unwillingness of the Respondent to relinquish their security interest to sell the assets of the corporate debtor prohibit the liquidator from selling the assets of the Corporate Debtor on which security is charged?

Whether the order of the Adjudicating Authority rejecting the permission to sell assets of the corporate debtor be set aside?

## **Judgment:**

It was held that enforcement of security interest is governed by the sec 13 of the SARFAESI Act and as per sec 13(9), for the realization of assets by the Secured Creditors confirmation from the Creditors having at least 60% of the value of total debt is required. In the present case, the Respondent does not hold a superior charge from the rest of the Secured financial creditors in the secured Assets. Application of above provision of SARFAESI Act was made to end the deadlock situation, and the decision of 73.76% of majority Secured Creditors, who have relinquished the Security Interest was made binding on the dissenting secured creditors, i.e. Respondent.

Respondent had placed reliance on the decision of the Hon'ble Tribunal passed in case of *JM Financial Asset Reconstruction Company Ltd. Vs. Finquest Financial Solutions Pvt. Ltd. and Others* but facts of the present case were held to be different from that in the case.

The Appeal was allowed with no costs and the impugned Order of the Adjudicating Authority was set aside and the Appellant/Liquidator was directed to complete the Liquidation Process.

**Reference:** <https://ibbi.gov.in/uploads/order/2020-06-23-175455-7my21-8f14e45fcee167a5a36dedd4bea2543.pdf>

#### **4. State of Haryana V/s Uttam Strips Ltd and Ors.**

**Case citation / Writ petition :** Company Appeal (AT) (Insolvency) No. 319 of 2020  
**Decided on:** 23 June, 2020

#### **Order passed by:**

V. P. Singh, Member (T) ;  
National Company Law Appellate Tribunal, New Delhi

**Facts in brief:** The NCLT Delhi Bench had admitted an Application u/s 9 of the I&B Code, 2016 against the Corporate Debtor Uttam Strips Limited, filed by Power2SME Private Ltd. After the CIRP completion and approval of the Resolution Plan ; the Resolution Plan got implemented with 100% vote of the Committee of Creditors .

The Appellant Excise & Taxation Officer-cum-Assessing Authority, Mewat (Nuh), State of Haryana assessed Tax on gross turnover of the

Assessment Year 2015-16. The Appellant came to know about the Corporate Insolvency Resolution Process initiated against the Assessee/Corporate Debtor in the of June 2019 through the Chartered Accountant. The Appellant stated that for four Assessment Years, i.e. 2013-14 to 2016-17 total outstanding Dues against the Corporate Debtor was Rs.1,95,62,231/- and after getting to know about the CIRP initiated against the Corporate Debtor, immediately the appellant contacted the IRP, Mr Navneet Kumar Jain, IRP and submitted the Proof of Claim along with the Assessment Orders and Tax Demand Notices. But the IRP, vide email dated 04th June 2019, informed that he was not dealing with the case. The Appellant was not aware of the Order of the Adjudicating Authority due to non-cooperation of the IRP and lack of information/notice from any source.

The whole situation was brought to the knowledge of the higher officials in the Excise Department, State of Haryana but due to the declaration of Legislative Assembly Elections in the State of Haryana in October 2019, the Appellant could not file the documents before the NCLT.

The Appellant was informed about the passing of the Order dated 06th June 2019 and Resolution Plan submitted by M/s Jyoti Strips Private Limited. The Appellant applied Section 60(5) of the I&B Code, seeking directions against the Resolution Professional to accept its claim as an Operational Creditor and modify the Resolution Plan by incorporating the statutory dues of the Appellant but the same was dismissed by a non-speaking Order which was under appeal before the tribunal

#### **Issues:**

Whether Operational Creditor can file its claim after approval of Resolution Plan?

#### **Judgment:**

The treatment of all debts, whether statutory or contractual, operational or financial, secured or unsecured, arising out of or related to a period prior to the Insolvency Commencement Date, be brought under a common umbrella, so as to enable the Resolution Applicant to comprehensively deal with them. Once a treatment is given to the debts under the Resolution Plan, no other action may be taken either against the Corporate Debtor or against a Resolution Applicant who acquires the Corporate Debtor through the Corporate Insolvency Resolution Process. Hon'ble Supreme Court in the case of Committee of Creditors of

*Essar Steel India Limited Vs. Satish Kumar Gupta & Ors.* stated that a Successful Resolution Applicant is not to be burdened with undecided claims at the stage of implementation of the Resolution Plan and be provided with a company free from past liabilities. The statutory dues are operational debts, and once a resolution plan is approved by the NCLT, the treatment of all stakeholders, including Operational Creditors, is to be determined as per the terms of the approved Resolution Plan.

In the case of *Pr. Director General of Income Tax (Admn. TPS) vs M/s Synergies Doorway Automotive Ltd. & Ors.*, while considering the issue of whether „Income Tax“, „Value Added Tax“ or other statutory dues, such as „Municipal Tax“, „Excise Duty“, etc. come within the meaning of „Operational Debt“ or not, this Tribunal has held that all such dues shall fall within the definition of „Operational Debt“ under Section 5(21) of the IB Code.

Once a Resolution Plan is approved by the NCLT, all dues, whether financial or operational, shall be dealt with in the manner provided under such Resolution Plan and no creditor of the Corporate Debtor be allowed to raise belated claims and challenge the approved Resolution Plan, much after its implementation. That insofar any contingent liabilities or claims are concerned, or any creditors who failed to file any claim during CIRP, the same were duly accounted for in the Resolution Plan of the corporate debtor and were given a NIL value.

**Reference:** <https://ibbi.gov.in/uploads/order/2020-06-23-173757-c4ejf-c4ca4238a0b923820dcc509a6f75849b.pdf>

**5. MrSavanGodiwalaThe liquidator of Lanco Infratech Limited V/s. Mr. Apalla Siva Kumar**

**Case citation / Writ petition :** Company Appeal (AT) (Insolvency) No. 1229 of 2019

**Decided on:** 11 February 2020

**Order passed by:** V. P. Singh, Member (T)  
National Company Law Appellate Tribunal, New Delhi

**Facts in brief:**

This appeal arises from an order passed by the NCLT, Hyderabad Bench whereby it was held that the Liquidator cannot avoid liability to pay Gratuity to the employees on the ground that

the Corporate Debtor did not have sufficient grounds for the payment of gratuity. Further, vide the impugned order, the Liquidator was directed to provide sufficient funds for the payment of gratuity, based on the eligibility of the employees. This was essentially an interim application filed by the ex employees of the Corporate Debtor, in order to seek directions to the Liquidator, to treat gratuity dues of the employees on highest priority, and not as a part of the estate of the Corporate Debtor.

The Corporate Debtor had failed to maintain a gratuity fund or obtain insurance in order to fulfill its liability towards payment of the gratuity to its employees, under the Payment of Gratuity Act, 1972. The Liquidator's contention was that, since a separate fund was not maintained for payment of gratuity, it cannot be paid from the running accounts of the Corporate Debtor, as and when the amount became due. However, the ex-employees contended that Section 36(4)(a)(iii) excluded gratuity dues from the estate of the Corporate Debtor, it is thus treated as an asset of employees lying with the Corporate Debtor, and hence should be paid in priority to any payment made under the waterfall mechanism

**Issue:**

Whether the Liquidator is bound to pay the gratuity dues to the employees, even if the Corporate Debtor did not maintain a separate fund for the payment of gratuity?

**Judgment:**

The Gratuity fund, pension fund and provident fund do not come within the purview of 'Liquidation estate' for the purposes of Section 53 of the Code. Thus, the Liquidator cannot utilize, attach or distribute these funds to satisfy the claims of other creditors. The Liquidator is supposed to hold the Liquidation Estate in fiduciary for the benefit of all the creditors and has no jurisdiction to deal with any other property of the Corporate Debtor that does not form part of the Liquidation Estate. For the same reason, it was held that, even where no fund is created by the Company, the Liquidator cannot be directed to make the payment of gratuity to the employees, since he has no domain to deal with properties outside the Liquidation estate.

The NCLAT held that the Liquidator should not have been directed to make a provision for the payment of gratuity to the workmen as per their entitlement. The appeal was allowed and the direction to the Liquidator to make provision for

payment of gratuity, without there being a separate fund, was set aside.

**Reference:**<https://ibbi.gov.in/uploads/order/5150885293ac99dafcddec2b2dbb07d9.pdf>

**6. Pankaj Aggarwal V/s Union Of India And Ors**

**Case citation / Writ petition :**

W.P.(C) 3685/2020 & CM APPLs. 13194/2020, 13195/2020,13196/2020

**Decided on:** 23 June, 2020

**Order passed by:**

Justice Prathiba M. Singh ; Delhi High Court, through Video Conferencing

**Facts in brief:**

This is a petition filed in order to challenge the impugned order passed by the NCLT dated 29 May 2020 wherein an application under Section 9 of the Insolvency and Bankruptcy Code, 2016 was admitted against M/s VMA Enterprises Private Limited. The order declared a moratorium u/s 14 of the Code and also appointed an IRP.

The Petitioner in this case is the Promoter/Director of the Corporate Debtor. The contention of the Petitioner was that the Corporate Debtor falls within the category of MSME and has failed to appreciate that with

effect from 24 March 2020, the jurisdiction of the NCLT has been increased to Rs. 1 crore. However, the NLCT, in the operative portion of the order, had proceeded on the basis of the default amount being over Rs. 1 lakh.

**Issue:**

Whether the Hon'ble NLCT has failed to appreciate the notification dated 24 March 2020 of increase in threshold from one lakh rupees to one crore rupees in respect of CIRP?

**Judgment:**

The Delhi High Court held that the said notification was brought about in order to ensure that MSME's are not subject to insolvency proceedings during the lockdown or immediately thereafter. There was an error held on the part of the NCLT as the said notification dated 24 March 2020 was applicable to the Corporate Debtor.

Subject to the Petitioner depositing an amount of Rs. 10 lakhs with the Id. Registrar General of the Court, within two weeks, the impugned order was stayed till the next date of hearing. Meanwhile, VMA Enterprises Private Limited was permitted to carry on its day to day operations.

**Reference:**<https://ibbi.gov.in/uploads/order/712b14aa4a7d7456bc85ecb7fc552809.pdf>

## A COMPILATION OF RELAXATIONS BY SEBI IN THE CURRENT COVID-19 SCENARIO



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The COVID 19 virus has hit populations around the world and has resulted in many restrictions, including free movement of people, thereby hampering businesses and day to day functioning of companies. It has been declared a 'pandemic' by the World Health Organization (WHO). Developments arising due to the spread of the virus warrant the need for temporary relaxations in compliance requirements for listed entities. Accordingly, SEBI has decided to grant the following relaxations from compliance stipulations specified under the SEBI.

### A. THE TIMELINES FOR CERTAIN FILINGS AS REQUIRED UNDER THE PROVISIONS OF SEBI LODR ARE EXTENDED, AS FOLLOWS:

SL NO.	REGULATION ASSOCIATED FILING AND	FILING		RELAXATION W.R.T. THE QUARTER / HALF YEAR / YEAR ENDING		
		FREQUENCY	DUE WITHIN	DUE DATE	EXTEND DATE	PERIOD OF RELAXATION
1.	Regulation 7(3) relating to compliance certificate on share transfer facility	Half yearly	One month of the end of each half of the financial year	April 30, 2020	May 31, 2020	1 month
2.	Regulation 13(3) relating to Statement of Investor complaints	Quarterly	21 days from the end of each quarter	April 21, 2020	May 15, 2020	3 weeks (appx.)
3.	Regulation 24A relating to Secretarial Compliance report	Yearly	60 days from the end of the financial year	May 30, 2020	July 31, 2020	2 month

4.	Regulation 27(2) relating to Corporate Governance report	Quarterly	15 days from the end of the quarter	April 15, 2020	May 15, 2020	1 month
5.	Regulation 29 (2) of LODR specifies that stock exchanges need to be provided prior intimation about meetings of the board (excluding the date of the intimation and date of the meeting) as follows: at least 5 days before the meeting of financial results are to be considered; 2 working days in other cases				July 31, 2020	Intimation of 5 days / 2 working days shall be reduced to 2 days, for board meetings held till July 31, 2020.
6.	Regulation 31 relating to Shareholding Pattern	Quarterly	21 days from the end of the quarter	April 21, 2020	May 15, 2020	3 weeks (appx.)
7.	Regulation 39 (3) of LODR requires listed entities to submit information regarding loss of share certificates and issue of the duplicate certificates, to the stock exchange within two days of its getting information.				May 31, 2020	This relaxation is for intimations to be made between March 1, 2020 to May 31, 2020.
8.	Regulation 40(9) relating to Certificate from Practicing Company Secretary on timely issue of share certificates	Half Yearly	1 month of the end of each half of the financial year	April 30, 2020	May 31, 2020	1 month
9.	Regulation 44(5) relating to holding of AGM by top 100 listed entities by market capitalization for FY 19-20	Annual	Within a period of 5 months from the date of closing of the financial year	August 31, 2020	September 30, 2020	1 month
10.	Regulation 47 of the LODR requires publishing, in the newspapers, information such as notice of the board meeting, financial results etc				June 30, 2020	Exempted publication of advertisements in newspapers for all events scheduled till June 30, 2020

11.	Regulation 52 (1) and (2) relating to Financial Results	Half yearly/ Yearly	45 days from the end of the Half Year / 60 days from the end of Financial Year for Annual Financial Result	May 15, 2020  May 30, 2020	July 31, 2020  July 31, 2020	91 days  2 month
12.	Large Corporate-Initial Disclosure and Annual Disclosure	Yearly	Initial Disclosure - within 30 days from the beginning of Financial year  Annual Disclosure - within 45 days from the end of Financial year	April 30, 2020  May 15, 2020	June 30, 2020  June 30, 2020	60 Days  45 Days
13.	The Nomination and Remuneration Committee, Stakeholders Relationship Committee and Risk Management Committee shall meet at least once in a year	Yearly		March 31, 2020	June 30, 2020	3 months

**B. THE FOLLOWING RELAXATIONS SPECIFIED IN SEBI (MUTUAL FUNDS) REGULATIONS, 1996 AND CIRCULARS ISSUED THEREUNDER**

<b>SR. NO.</b>	<b>REGULATION / CIRCULAR AND DISCLOSURE ASSOCIATED</b>	<b>PARTICULARS</b>	<b>DUE DATE</b>	<b>EXTENDED DATE</b>
1.	Risk management framework fo liquid and overnight funds and norms governing investment in short term deposits dated September 20, 2019	Liquid funds shall hold at least 20% of its net assets in liquid assets	April 1, 2020	June 30, 2020
2.	Review of investment norms for mutual funds for investment in Debt and Money Market Instruments dated October1, 2019	Existing open ended mutual fund schemes shall comply with the revised limits for sector exposure	April 1, 2020	June 30, 2020
3.	Valuation of money market and debt securities dated September 24, 2019	Amortization based valuation shall be dispensed with and irrespective of residual maturity, all money market and debt	April 1, 2020	June 30, 2020

		securities shall be valued in terms of paragraph 1.1.2.2 of the Circular		
4.	Half yearly disclosures of unaudited financial results as required under Regulation 59 of SEBI (Mutual Funds) Regulations, 1996		April 30, 2020	May 31, 2020
5.	Disclosure of commission paid to distributors as required under Point 2 (a) of SEBI circular No. SEBI/HO/IMD/DF2/CIR/P/2016/42 dated March 18, 2016		April 10, 2020	May 10, 2020
6.	Yearly disclosure of investor complaints with respect to Mutual Funds as required under Point 4 (b) of SEBI circular No. Cir / IMD / DF / 2 / 2010 dated May 13, 2010		May 31, 2020	June 30, 2020

### C. RELAXATION IN TIMELINES FOR COMPLIANCE WITH REGULATORY REQUIREMENTS BY DEPOSITORY AND DEPOSITORY PARTICIPANTS.

SR. NO	COMPLIANCE REQUIREMENTS	EXISTING TIMELINES / DUE DATE	EXTENDED TIMELINES / DUE DATE	SEBI CIRCULAR REFERENCE
1.	Submission of BO Grievances Report to Depositories	10 <sup>th</sup> of the following month i.e. 10 <sup>th</sup> April for the month of March 2020.	May 18, 2020 for the month of March 2020 and April 2020.	SEBI/HO/MIRSD/MIRSD 2/CIR/P/2016/95 dated September 26, 2016
2.	Submission of half yearly Internal Audit Report (IAR) by DPs for half year ended 31st March 2020	15th May 2020 for half year ending March 2020	June 30, 2020, for half year ended March 2020.	SEBI/HO/MIRSD/MIRSD 2/CIR/P/2016/95 Dated September 26, 2016
3.	Redressal of investor grievances.	Within 15 days of the date of receipt of the complaint through SCORES & within 30 days of the date of receipt of the complaint other than received through SCORES	Period of exclusion shall be from March 23, 2020 till July 31, 2020.	SEBI/HO/MIRSD/MIRSD 6/CIR/P/2017/20 dated March 10, 2017 & Regulation 36 (f) of SEBI (Depositories & Participants) Regulations, 2018
4.	Transmission of securities.	Within 7 days, after receipt of all requisite documents	Period of exclusion shall be from March 23,	CIR/MIRSD/10/2013 dated October 28, 2013

			2020 till July 31, 2020	
5.	Closure of demat account	Within a period of 30 days	Period of exclusion shall be from March 23, 2020 till July 31, 2020  A15-day time period after July 31, 2020 is allowed to Depository / DPs, to clear the back log.	CIR/MIRSD/12/2013 dated December 4, 2013
6.	Systems audit on annual basis.	Within three months of the end of the financial year	July 31, 2020 for the financial year ended March 31, 2020.	SEBI/HO/MIRSD/CIR/PB /2018/147 dated December 3, 2018
7.	Reporting for Artificial Intelligence (AI) and Machine Learning (ML) applications.	Within 15 calendar days of the expiry of the quarter.	Till July 31, 2020 for the quarter ended on March 31, 2020.	SEBI/HO/MIRSD/DOS2/ CIR/P/2019/10 January 04, 2019.
8.	Risk Based Supervision	15 <sup>th</sup> May for half year ended March 31, 2020	June 30, 2020 for half year ended March 2020	
For Compliance requirements at S. Nos.3,4 and 5 above, a 15-day time period after May 17, 2020 is allowed to Depository / depository participants, to clear the back log.				

#### D. RELAXATION IN TIME PERIOD FOR CERTAIN ACTIVITIES CARRIED OUT BY DEPOSITORY PARTICIPANTS, RTAS / ISSUERS, KRAS, STOCK BROKERS

SR NO.	REQUIREMENTS	EXISTING TIMELINE	PERIOD OF EXCLUSION	REFERENCE SEBI REGULATION / CIRCULAR
1.	Processing of the demat request form by Issuer / RTA.	15 days	Period of exclusion shall be from March 23, 2020 till July 31, 2020	Regulation 74 (5) of SEBI (Depositories & Participants) Regulations, 2018.
2.	Processing of the demat request form by the Participants	7 days		Regulation 74 (4) of SEBI (Depositories & Participants) Regulations, 2018.
3.	KYC application form and supporting documents of the clients to be uploaded on system of KRA within 10 working days	10 days		SEBI circular no. MIRSD/Cir-26/2011 dated December 23, 2011.
Further a 15-day time period after July 31, 2020, 2020 is allowed to the SEBI registered intermediary, to clear the back log				

**E. THE TIMELINES FOR CERTAIN FILINGS AS REQUIRED UNDER VARIOUS SEBI REGULATIONS ARE EXTENDED, AS FOLLOWS:**

SL NO.	REGULATION AND ASSOCIATED FILING	RELAXATION W.R.T. THE QUARTER / FINANCIAL YEAR ENDING MARCH 31, 2020		
		DUE DATE	EXTENDED DATE	PERIOD OF RELAXATION
1.	Various Entities to provide capital and debt market services for a period of 21 days with effect from March 25,2020	May 3, 2020	May 18, 2020	Two weeks with effect from May 04,2020
2.	Submission of cyber security audit reports as mandated in SEBI circular dated January 10, 2019	June 30, 2020	August 31, 2020	Two Months
3.	Filing scheme annual reports for the year 2019-2020	July 31, 2020	August 31, 2020	One Month
4.	Review of Margin Framework for Cash and Derivatives segments (except for Commodity Derivatives Segment)	May 01, 2020.	June 01, 2020	One Month
5.	Relaxation in Regulation 24(i)(f) of the SEBI (Buy-back of Securities) Regulations, 2018		December 31, 2020	The said period of one year may be reduced to six months and
6.	Regulatory filings for AIFs and VCFs for the periods ending March, April, May, June 2020.	March, April, May and June 2020	on or before August 07, 2020	Two months
7.	Monthly reporting to SEBI by Portfolio Managers for the periods ending March 31, 2020 and April 30, 2020	March 31, 2020 and April 30, 2020	May 31, 2020 and June 30, 2020	Two months
8.	Temporary relaxation in processing of documents pertaining to FPIs due to COVID-19		June 30, 2020	
9.	For implementation of the circular on Stewardship Code for all Mutual Funds and all categories of AIFs		July 01, 2020	
10.	Relaxation from compliance with certain provisions of the circulars issued under SEBI (Credit Rating Agencies) Regulations, 1999			The above relaxation is extended till the period of moratorium by the RBI.
11.	The disclosure filings under Regulations 30(1), 30(2) and 31(4) of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (SAST Regulations)	April 15, 2020.	June 01, 2020	
12.	Cutoff date for issuance of NCDs/NCRPS/CPs	On or before March 31, 2020	On or before June 30, 2020	3 Month

## **F. RELAXATIONS FROM CERTAIN PROVISIONS OF THE SEBI (ISSUE OF CAPITAL AND DISCLOSURE REQUIREMENTS) REGULATIONS, 2018 IN RESPECT OF RIGHTS ISSUE.**

### **A. Relaxations with respect to the eligibility conditions related to Fast Track Rights Issues:**

Unless otherwise specified, nothing contained in sub-regulations (1), (2), (4) and (5) of the Regulation 71 shall apply if the issuer satisfies the conditions mentioned under Regulation 99 of ICDR Regulations for making a rights issue through the fast track route. Certain temporary relaxations with respect to Regulation 99 of ICDR Regulations are extended as follows:

- i. In regulation 99(a) the words 'three years' shall be read as 'eighteen months'
- ii. In regulation 99(c) the words 'two hundred and fifty crores' shall be read as 'one hundred crores'
- iii. In regulation 99(f) and its proviso the words 'three years' shall be read as 'eighteen months'
- iv. Regulation 99(h) shall be read as under: "no show-cause notices, excluding under adjudication proceedings, have been issued by the Board and pending against the issuer or its promoters or whole-time directors as on the reference date;

In cases where against the issuer or its promoters/ directors/ group companies,

- i. A show cause notice(s) has been issued by the Board in an adjudication proceeding or
- ii. prosecution proceedings have been initiated by the Board;

necessary disclosures in respect of such action (s) along-with its potential adverse impact on the issuer shall be made in the letter of offer.

- v. Regulation 99(i) shall be read as "the issuer or promoter or promoter group or director of the issuer has fulfilled the settlement terms or adhered to directions of the settlement order(s) in cases where it has settled any alleged violation of securities laws through the consent or settlement mechanism with the Board"

- vi. In regulation 99 (j) the words 'three years' shall be read as 'eighteen months'.
- vii. Regulation 99 (m) shall be read as "For audit qualifications, if any, in respect of any of the financial years for which accounts are disclosed in the letter of offer, the issuer shall provide the restated financial statements adjusting for the impact of the audit qualifications.

Further, that for the qualifications wherein impact on the financials cannot be ascertained the same shall be disclosed appropriately in the letter of offer."

### **B. Relaxation with respect to Minimum Subscription:**

Regulation 86(1) shall be read as under-

The minimum subscription to be received in the issue shall be at least seventy-five percent of the offer through the offer document.

Provided that if the issue is subscribed between 75% to 90%, issue will be considered successful subject to the condition that out of the funds raised atleast 75% of the issue size shall be utilized for the objects of the issue other than general corporate purpose.

### **C. Relaxation with respect to the minimum threshold required for not filing draft letter of offer with SEBI:**

In regulation 3(b), proviso to regulation 3 and in regulation 60, the words 'ten crores' shall be read as 'twenty-five crores'.

The eligibility and general conditions as specified in Regulation 61 & 62 respectively shall continue to apply

These temporary relaxations are applicable for Right Issues that open on or before March 31, 2021 and relaxations mentioned are not applicable for issuance of warrants.

#### **Source:**

<https://www.sebi.gov.in/sebiweb/home/HomeAction.do?doListing=yes&sid=1&ssid=7&smid=0>

## **WINNERS OF THE ICSI-WIRC UNIQUE COMPETITION ON EXPRESS YOURSELF - CHALLENGE 13!**

1. CS Riddhi Thakker (Membership No.: A29805) - Winner
2. CS Latesh Shah (Membership No.: A24575) - 1<sup>st</sup> Runner Up
3. CS Vibhuti Trivedi (Membership No. A56893) - 2<sup>nd</sup> Runner Up

***Congratulations!!!***

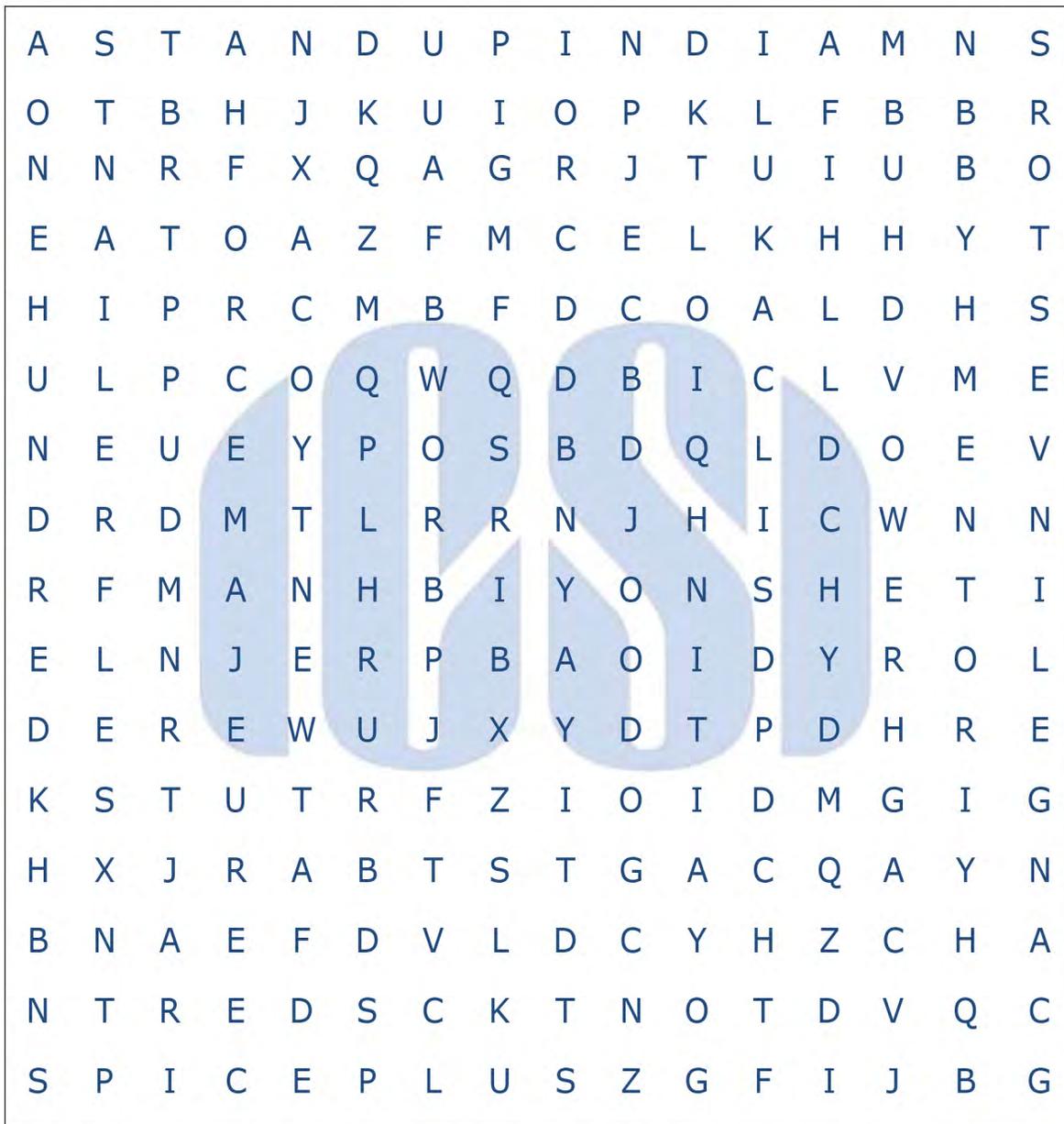
## **WINNERS OF THE ICSI-WIRC 's Opinion Writing competition**

1. CS Rohan Ajay Bhagwat (Membership no - A26954) - Winner
2. CS Hetali Harish Mehta (Membership no - A50317) - Co-Winner - 1st Runner UP
3. CS Shweta Gupta (Membership no - 18275 ) Co- Winner - 1st Runner Up
4. CS Vinita Venugopal Nair (Membership no- F10559) - 2nd Runner Up

***Congratulations!!!***

**WORD SEARCH**  
(Based on Atmanirbhar Bharat / Startups/MSMEs)

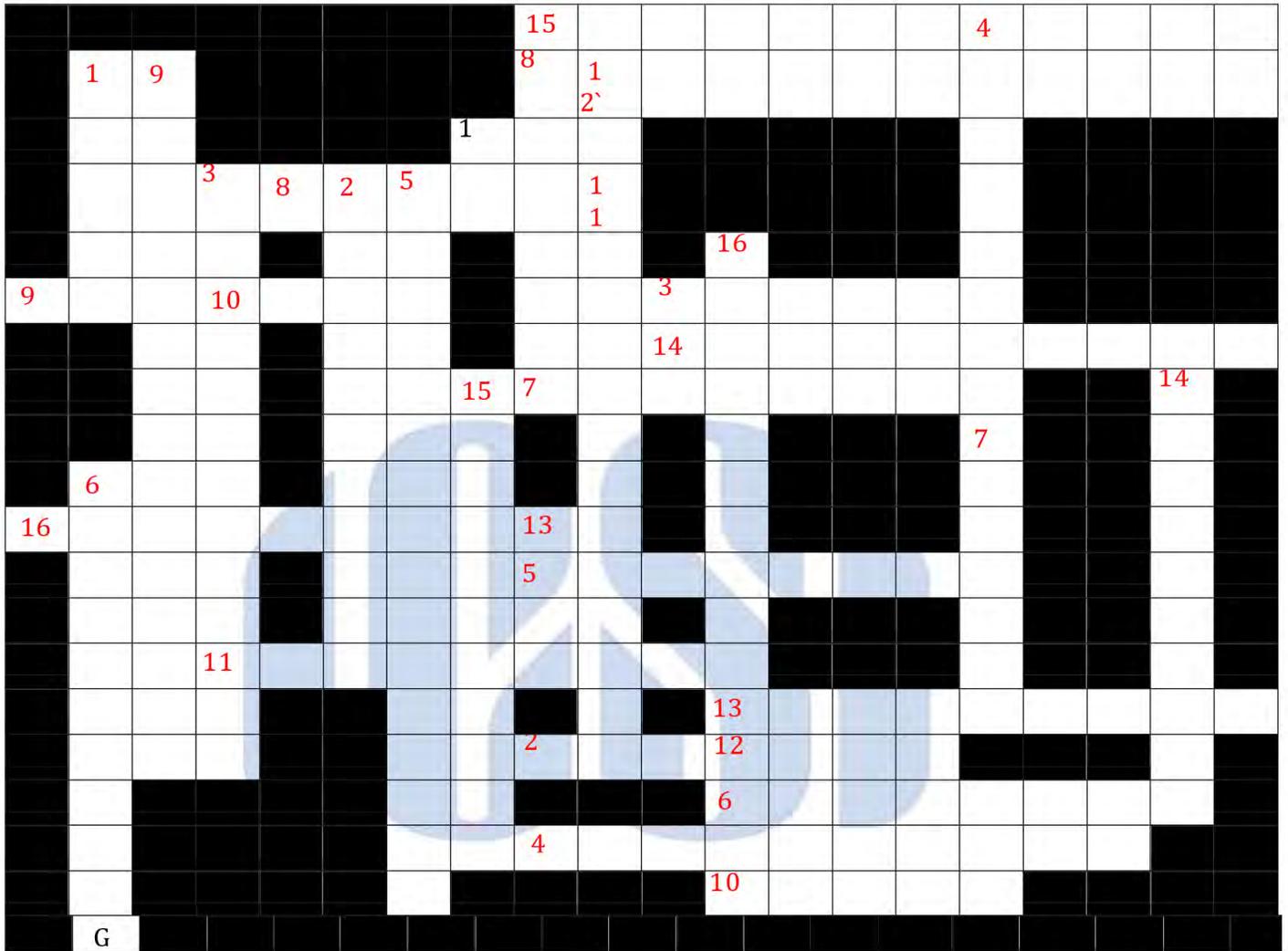
*By PCS Hema Gaitonde  
Mumbai*



## WORD SEARCH CLUES

1. Atmanirbhar in English (4,7)
2. Power Distribution Companies (7)
3. Role of Company Secretary under the Atmanirbhar Bharat Abhiyan (6)
4. Many parties are invoking the _____ clause in the contract due to COVID 19 pandemic (5, 7)
5. Website recently launched by our Hon'ble PM being a technology platform and one stop place for the MSME SECTOR(9)
6. Maximum investment limit upto which _____ a business unit will be classified as MSME _____crores (6)
7. Maximum Turnover limit upto which a business unit will be classified under MSME_crores ( 3,7)
8. As per the Atmanirbhar Bharat (AB) program , Government will introduce private sector participation in _____ sector (4)
9. A digital platform to support MSMEs so that they _____ can encash their receivables without delay.(5)
10. As per the AB program, India to become Global HUB for _____ Maintenance, Repair and Overhaul(MRO) (7)
11. Integrated Web Form for incorporation of a Company with MCA (5,4)
12. One-stop platform for all stakeholders in the Startup ecosystem to interact amongst each other, exchange knowledge and form successful partnerships in a highly dynamic environment.(7,5,3)
13. Person who provides capital for business startup (5,8)
14. Government Scheme to facilitate bank loan to at least one women borrower per bank branch for setting up a greenfield enterprise. (5, 2 ,5).
15.National Institution for Transforming India, which was set up in 2015. (4,4)

## FOCUS CROSSWORD – VOL. IV



**HORIZONTAL  
ACROSS**

1	Pursuant to Regulation 29(2) of SEBI(LODR), 2015,as per recent amendment, in case of relaxation, prior intimation of 5/2 working days for Board meeting is reduced to _____ days. (3 Letters)
2	As per latest MCA Circular, requirement to create the _____ repayment reserve of 20% of deposits maturing during F.Y.2020-21 before 30th April,2020 shall be allowed to be complied with till 30th September, 2020. (7 Letters)
3	_____ is a method of Corporate Restructuring. ( 6 Letters)
4	For making Aatmanirbhar Bharat and making street vendors aatmanirbhar, a scheme of special Micro Credit Facility launched for street vendors, is known as _____ (10Letters)
5	In India, it was a failed process in case of the companies Escorts Ltd. and DCM Ltd because there were not any rules and regulations regarding it at that time. (8 Letters)
6	Listed entity/its material subsidiary shall obtain information from the _____ in the format specified and ensure disclosure of the same under Sub-clause (7A) of Clause A in Part A of Schedule III under Regulation 30(2) of SEBI (LODR) Regulations, 2015. (7 Letters)
7	As per Regulation 27 (2) of SEBI (LODR), 2015 the listed entity shall submit a quarterly compliance report on Corporate Governance within _____ days from close of each quarter. (14 Letters)
8	_____ entities were asked to disclose the impact of COVID-19 on business, vide circular dated 20th May,2020, issued by SEBI as per SEBI LODR Regulations,2015 (6 Letters)
9	One of the objectives of this Ministry is to evolve Pharmacopoeial Standards for Indian Systems of Medicine and Homoeopathy drugs. (5 Letters)
10	On 24 <sup>th</sup> June 2020, Union Cabinet Meeting chaired by PM Shri Narendra Modi, approved a scheme for interest subvention of 2% for a period of 12 months, to all Shishu Loan accounts under PM _____ Yojana to eligible borrowers. (5 Letters)
11	This enactment, which came in to effect in 2006, is providing opportunities for interaction among the members of the profession, as one of its key objectives. (9 Letters)
12	The Ministry of Corporate Affairs is steering the process of formulating a National Action Plan on Business and _____ (NAP). (11 Letters)

13	A level with top and great authority. (9 Letters)
14	Any person can file an _____ against a Trademark within a period of 3 months from the date when the trademark is advertised or re-advertised in the Journal. (10 Letters)
15	The amount by which the cost of a country's imports exceeds the value of its exports. (12 Letters)
16	Accounting Standard (AS) 19 deals with the accounting policies applicable for _____ (5 Letters)
<b>VERTICAL / DOWN</b>	
1	As per latest circular issued by MCA, the relaxation/exemption of mandatory requirement of holding meetings of the Board of directors of companies within the intervals of 120 Days, now extended by a further period of _____ days, i.e., till 30th September,2020. (5 Letters)
2	All _____ directors are required to register themselves with the Databank within a period of 7 months effective from 1st December, 2019. Now the last date of registration has been extended upto 30th September, 2020. (11 Letters)
3	Farmers will be provided institutional credit facilities at concessional rates through _____ Credit Cards. (5 Letters)
4	The Pradhan Mantri Matsya Sampada Yojana (PMMSY) will be launched for integrated, sustainable, and inclusive development of all types of _____. (9 Letters)
5	_____ Facility of Rs 50,000 crore was announced by RBI, recently for mutual funds to provide liquidity support. (16 Letters)
6	SEBI has come out, recently with an Operational Framework for transactions in defaulted debt securities, post _____ date under the provisions of SEBI (Issue and Listing of Debt Securities) Regulations, 2008. (10 Letters)
7	_____ is a mandatory and an online platform designed to help investors to lodge their complaints, pertaining to securities market, with SEBI against listed companies and SEBI registered intermediaries (6 Letters)
8	Pursuant to Sec.42(6) of Companies Act,2013, if a Company fails to repay the application money within the prescribed period, it shall be liable to repay that money with interest at the rate of _____ % per annum from the expiry of, the last day of the prescribed period.(6 Letters)

9	Any preference issue shall not be made to the entities considered as '-----' as per the guidelines of the Reserve Bank of India issued under the Banking Regulation Act, 1949. (15 Letters)
10	He was a Commanding Officer of 16th Bihar Regiment and in a violent face-off with the Chinese troops at Galwan Valley, sacrificed his life and now he is a martyr. (11 Letters)
11	The exercise to identify and _____ the provisions of Companies Act, 2013 is aimed at incentivizing compliance, de-clogging of criminal justice system and promoting congenial business climate. (13 Letters)
12	The Companies Act 2013 allows the meetings of the Board of directors to be convened through VC or _____ (4 Letters)
13	Forms were not to get marked as " _____ " due to non-resubmission, during the extended period between 15 <sup>th</sup> March 2020 and 30 <sup>th</sup> June 2020. (4 Letters)
14	Under the Constitution of India, "Labour" falls within the _____ list giving power to both the Central and respective State Government. (10 Letters)
15	As per recent circular issued by RBI, all banks including those not listed and/ or operating as branches, in India, shall undertake _____ audit in line with provisions of section 204 of the Companies Act, 2013. (11 Letters)
16	In view of the continuing restrictions on movement of people due to COVID-19 and lockdown, MCA vide its latest circular dated 15.06.2020 has extended Time Limit for holding EGMs till end of _____, 2020. (9 Letters)

ANSWER FOR FOCUS CROSSWORD VOL. III (MAY 2020)

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## **MANDATORY COMPLETION OF PROGRAM CREDIT HOURS (PCH) BY MEMBERS**

It may be noted that the PCH requirement for the block year 2017-2020 as below is ending by 31.03.2020. Members who have not completed the stipulated hours may complete the same by 30.06.2020. The Guidelines for Compulsory Attendance of Professional Development Programmes by the Members is available at link <https://www.icsi.edu/media/webmodules/cp/PDPGuidelines3.pdf>

## **REVISED GUIDELINES FOR COMPLETION OF PCH FOR THE CURRENT BLOCK 2017-20**

In view of the advisory issued by Ministry of Health and Family Welfare, Government of India regarding Novel Corona Virus Disease (COVID-19) and in view of the entire country being under lockdown, to prevent the further spread of the dreaded virus, the said time limit for obtaining the mandatory PCH has been further extended up to 30th June, 2020.

With a view to facilitate the members in obtaining the mandatory PCH the following measures have been taken:

- (i) the ceiling of maximum 8(eight) PCH through webinars is relaxed and the members shall be entitled for PCH through webinars without any limit till 30th April, 2020
- (ii) Members may also obtain up to 60 PCH by enrolling & qualifying the online assessment modules. The fee for appearing in each module shall be Rs.1000 + GST.
- (iii) Members may also obtain 10 PCH for every PMQ/Certificate Course at the time of enrolment  
\*(Members who have completed the PCH may kindly ignore)

## PAYMENT OF ANNUAL MEMBERSHIP AND CERTIFICATE OF PRACTICE FEE FOR FY 2020-2021

The annual membership fee and certificate of practice fee for FY 2020-21 has become payable w.e.f. April, 2020. The last date for payment of annual membership fee and certificate of practice fee will be 30th September, 2020.

The membership and certificate of practice fee payable for Associate and Fellow Members is as follows:

<b>PARTICULARS</b>	<b>ASSOCIATE (ADMITTED 31.03.2019) TILL</b>	<b>ASSOCIATE (ADMITTED ON OR AFTER 01.04.2019)</b>	<b>FELLOW</b>
Annual Membership fee*	Rs. 2950	Rs. 1770	Rs. 3540
Certificate of Practice fee*	Rs. 2360	Rs. 1770	Rs. 2360

\* Fee inclusive of applicable GST@18%

A member who is of the age of seventy years or above can claim 75% concession in the payment of Associate/Fellow Annual Membership fee. A member who is physically challenged can claim 50% concession in the payment of Associate/Fellow Membership fee. As per The Company Secretaries (Amendment) Regulations, 2020 effective from 3<sup>rd</sup> February, 2020, there is no concession for members of the age sixty years or above and below seventy years in payment of annual membership fee.

### **MODE OF REMITTANCE OF FEE**

The fee can be remitted through ONLINE mode only using the Institute's website [www.icsi.edu](http://www.icsi.edu) through members login portal <https://www.icsi.in/student/Login.aspx> by entering your Username and Password. (Only through member login under Manage Account Annual Membership Fee). Payment made through any other mode is not acceptable.

Members who do not have PASSWORD (User Name is your ACS I FCS number for eg. A12345 1 F 12345) can retrieve their password (if their email id & mobile number is registered with the Institute). The members who do not have registered email id & mobile number may make the request on <http://support.icsi.edu> by attaching scanned copy of Photo ID proof.

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The following may please be noted/ensured before making online payment of annual membership and COP renewal fee:

1. Non-CoP holders are required to register for eCSIN if applicable and if not registered yet.
2. COP holders are required to register for UDIN if not registered yet.
3. Declaration of PAN & Aadhaar is required.
4. Members are required to verify and update their address and contact details as required under Regulation 3 of the CS Regulations, 1982 amended till date.
5. Declaration of GSTIN number (optional) is required in order to claim GST Input Tax Credit. If GSTIN No. is not given it will not be reflected in the fee receipt.
6. The applicable fee is calculated by the system inclusive of GST@ 18%.

7. COP holders can pay the COP renewal fee along with the annual membership fee first or separately after having paid the annual membership fee.
8. Submission of online Form-D is a pre-condition for COP holders.

For more details, kindly refer to FAQs (Link is available on home page of [www.icsi.edu](http://www.icsi.edu) at top right corner) Point 6-16 (about membership fee), 20-26 (about COP fee) and 88-92 (about PCH) at the link: [https://www.icsi.edu/rmedia/webmodules/FAQ\\_Pertains\\_Membership.pdf](https://www.icsi.edu/rmedia/webmodules/FAQ_Pertains_Membership.pdf)

<p>For members login portal <a href="https://www.icsi.in/student/Login.aspx">https://www.icsi.in/student/Login.aspx</a></p>	
<p>For any further assistance, we are available to help you at <a href="http://support.icsi.edu">http://support.icsi.edu</a></p>	
<p>If you are looking for job please register at ICSI Placement Portal <a href="https://placement.icsi.edu">https://placement.icsi.edu</a> to apply for Jobs.</p>	

**Team ICSI**



## **Guidelines for members contributing articles to be published in FOCUS**

Western India Regional Council (“WIRC”) of The Institute of Company Secretaries of India (“ICSI”) is pleased to bring out a monthly magazine for corporate executives and other professionals, viz., “FOCUS” under the guidance of its newly formed Editorial Board. However, the Editorial Board wouldn’t be able to succeed in releasing FOCUS unless all the members of ICSI put in some efforts to make release of FOCUS a success. What better than writing articles for FOCUS and getting a ‘FOCUSSED’ recognition!

*“Start writing, no matter what. The water does not flow until the faucet is turned on.” — Louis L’Amour*

Well, if the above quote inspires you and you decide to author an article to be published in FOCUS, following are a few guidelines for authoring the articles for FOCUS (“Guidelines for FOCUS articles”).

1. The article must be original contribution of the author.
2. The article must be an exclusive contribution for FOCUS. The article must not have been published elsewhere and must not have been or must not be sent elsewhere for publication, in the same or substantially the same form.
3. The article should ordinarily have 1500 to 1,800 words. A longer article may be considered if the subject so warrants.
4. An article can be jointly written by not more than two (2) members.
5. Case studies and research-based articles with empirical data which would be of practical relevance to the company secretaries are welcome.
6. Unless a particular theme is provided by WIRC, articles on topics related to management, international trade, finance, tax and other related areas may be written and submitted for FOCUS.
7. Copyright of the article published in FOCUS shall vest with ICSI. However, in the event the article is hosted on some website/portal through ICSI or is reproduced elsewhere, prior intimation of the same shall be given to the author.
8. Extensive reproduction from other published works should be avoided. If the article contains any extracts from any other published work, reference to the original source should be given by way of foot notes. If prior permission of the original writer/publisher is required, it should be duly obtained by the author. The author alone would be responsible for the consequences arising from failure to do so.
9. ICSI or the Editorial Board of FOCUS has the sole discretion to accept/reject an article for publication in FOCUS or to publish it with modification and editing, as it considers appropriate.
10. The article submitted for FOCUS shall be accompanied by a ‘Declaration-cum-Undertaking’ by the author(s) in the format as prescribed below.
11. Any contravention of the aforesaid guidelines and breach of the undertaking furnished by the authors would be viewed seriously by ICSI and ICSI is entitled to take necessary action as it may deem fit in such cases.

Looking forward for your contribution.

**CS RAHUL P. SAHASRABUDDHE**  
**CHAIRMAN**  
**ICSI-WIRC**

**👉 DECLARATION-CUM-UNDERTAKING 👈**

I, \_\_\_\_\_ have read and understood the Guidelines for FOCUS and affirm that:

1. The article titled as “\_\_\_\_\_” as sent by me for publication in FOCUS is my original contribution and no portion of it has been adopted from any other source.
2. The above article is an exclusive contribution for FOCUS and has neither been nor would be sent elsewhere for publication.
3. The copyright in respect of my aforesaid article shall vest with ICSI and that if I intend to make use of the article in any other manner, I shall obtain prior permission from ICSI and shall abide by the conditions as may be imposed by ICSI, including without limitation disclosure of the original source i.e. FOCUS and its copyright owner.
4. The views expressed in my aforesaid article are mine and I solely shall be responsible for the views expressed in the article.

I undertake that I:

- a. comply with the Guidelines for FOCUS;
- b. shall abide by the decision of the Institute, i.e., whether this article will be published and / or will be published with modification / editing; and
- c. shall be liable for any breach of this 'Declaration-cum-Undertaking'.

\_\_\_\_\_  
**Signature of Author**

Date:

Place:



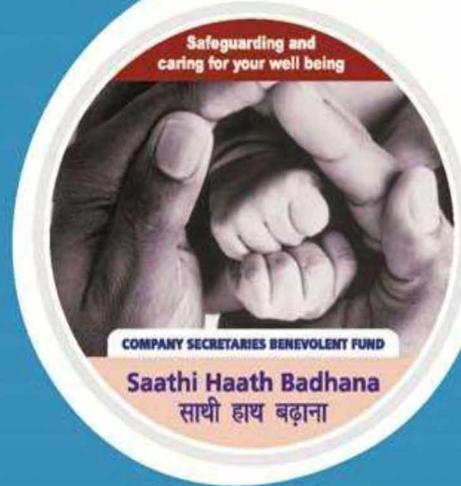
**THE INSTITUTE OF  
Company Secretaries of India**

**भारतीय कम्पनी सचिव संस्थान**

IN PURSUIT OF PROFESSIONAL EXCELLENCE  
Statutory body under an Act of Parliament  
(Under the jurisdiction of Ministry of Corporate Affairs)

**CSBF**

**COMPANY SECRETARIES  
BENEVOLENT FUND**



## What exactly is CSBF?

The Company Secretaries Benevolent Fund (CSBF) is a Society registered under the Societies Registration Act, 1860 and is recognized under Section 12A of the Income Tax Act, 1961.

The CSBF was established in the year 1976 by the ICSI, for creating a security umbrella for the Company Secretaries and/or their dependent family members in distress.

The amount of ₹ 7,50,000 (in the case of death of a member under the age of 60 years) has been increased to ₹ 10,00,000

The subscription amount is being increased from ₹ 10,000 to ₹ 12,500 soon

### Is it the right time to enrol in CSBF?

CSBF is the protection you and your family need to survive the many ups and downs in life, be it a serious illness or a road accident which derails your plans for the future.

### Is it a requirement?

Yes, as your dependents need the protection. Your dependents be it your parents, your spouse, or your children will have to bear the brunt of paying off your home/education personal loans and even for managing day-to-day expenses without your contribution.

If you do not want to leave behind such a situation in your absence, enrol in CSBF today.

## Advantages of enrolling into CSBF

- 1 To ensure that your immediate family has some financial support in the event of your unfortunate demise
- 2 To finance your children's education and other needs
- 3 To ensure that you have extra resource during serious illness or accident
- 4 Subscription/Contribution to CSBF qualifies for deduction under Section 80G of the Income Tax Act, 1961

Become a proud Member of CSBF by making a one-time online subscription of ₹ 10,000/- (to be changed soon) through Institute's web portal ([www.icsi.edu](http://www.icsi.edu)) along with Form 'A' available at link <https://www.icsi.edu/csbf/home> duly filled and signed.

*Decide Now! Decide Wise!*

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