



THE INSTITUTE OF Company Secretaries of India

भारतीय कम्पनी सचिव संस्थान

IN PURSUIT OF PROFESSIONAL EXCELLENCE

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WESTERN INDIA REGIONAL COUNCIL

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Vision

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

Motto

सत्यं वद। धर्मं चर। इष्टकारं कुरु। कर्माणि कुरु।

Mission

"To develop high calibre professionals facilitating good corporate governance"

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From the Desk of the Chairman...

Doing everything admirably well matters very little, if you can't finish the job. –

Vishwanathan Anand



CS Rahul Sahasrabudhe

Dear Professional Colleagues,

In his latest piece in the Sunday Express, Lord Meghnad Desai defines the current lock down as the Great Sudden Stop (GSS), he further adds that it is the window for India to the top. The GSS is not only taking its toll in the form of near complete stoppage of economic cycle but also giving a chance to “skills-have-nots” to window of opportunity to attain those missing chain of skill sets.

Though the activities at Western India Regional Council of ICSI have been hampered a bit due to GSS but we have ensured that it does not leave a permanent mark. Following are the activities carried out by WIRC during the GSS period:

A) For Students:

- 1) Online Classes for the OTC Students for Foundation and Executive Program for appearing in July 2020 examination.
- 2) Career Awareness Sessions, explaining about career path of our esteemed profession, through Live webinar. These programs were attended by over one thousand students across the region.

B) For members:

- 1) Arranged following regional level competitions for members of Western India Regional Council of ICSI: -
 - a. Petition Drafting Competition for members of Western India Regional Council. Results of the competition is announced in this edition.
 - b. Opinion writing competition for members of Western India Regional Council.
 - c. A novel competition, Express Yourself, Challenge 13!, in this competition, members were required to send maximum of 13 minute speech on given topics.

We have received overwhelming response to all these competitions.

- 2) Arranged 12 day lecture series through web mode on various contemporary and pertinent topics like Opportunities for Professionals post lockdown, Companies Act, Mergers et al, Nidhi Companies, etc.

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C) The WIRO also conducted three meetings through video conferencing of Chapter Chairmen and Chapter in charge to take the stock of activities of the region.

Irrespective of the GSS, the Western India Regional Council of ICSI will continue the momentum of quality and relevant programs with an objective of enriching members' knowledge and skill set.

Petyr 'Littlefinger' Baelish, a character from the famous fictional TV serial Game of Thrones, once said, "***Chaos is a ladder. Many who try to climb it fail and never get to try again. The fall breaks them. And some are given a chance to climb, but they refuse. They cling to the realm (success) or the gods or love.***" The current crisis has given ample time to all of us, in the longer run the one who has used this time wisely would definitely sprint ahead of others.

Yours Truly,

CS Rahul Sahasrabuddhe
Chairman
WIRC of ICSI

Place: Mumbai
Date: May 20, 2020

CORONA VIRUS (COVID-19) AND COMPANY SECRETARIES



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I. **INTRODUCTION:** -

We all are passing through a very difficult phase, probably nobody from our generation has experienced till now. Corona virus spread came as a rude shock, which was very sudden, unexpected and unprepared for. The virus has been spreading like wild fire without any limitation of geographical boundaries, caste, creed, sex, age, financial status or occupation.

World Health Organization (WHO) has declared Corona as pandemic. Entire world is reeling under locking down of human life, halting of business activities and struggling of mankind for its very survival. As of today, we are in the middle of the sea just hoping and looking for some solution.

Though many experts have been trying to predict post-corona scenario, we must accept and understand that it is very difficult to foresee any clear picture as of now. However this article is an attempt to assess effects of

Covid-19 effect on economy – especially Indian economy, on the basis of certain parameters.

II. **HISTORICAL EVENTS:** -

In the past also not only Indian economy but many other countries including world economy has undergone world-wide epidemic or similar events threatening to the survival of mankind. For example, many countries faced SARS, Ebola etc. The world also faced other like-wise events impacting world economies in the form of two world wars, great depression of 1929 and then regional threats like gulf war in the past. The terms Quarantine and Isolation were restricted to very few types of diseases and very few people in the past. For instance, T.B., cholera patient used to be isolated in the past till no medicine was available.

Then what is different in the threat of Covid-19?

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Firstly, though it is highly *contagious, till now* there is no medicine available to treat Corona. All countries are trying to explore different methodologies to contain this pandemic by undertaking medical research for finding out medicine, locking down, total ban on travel and transport and so on. **Secondly**, lock down, ban on travel and transport except essentials, has resulted in complete halting of business and economic activities in most parts of the world. **Thirdly**, due to lock down, new problems have come up like psychological imbalances, identification of new cases, supply of essentials in infected areas etc. **Lastly**, it is very unclear to everybody, as to when this pandemic would end and normal life would return.

III. MAIN FEATURES OF INDIAN ECONOMY: -

- a) **Population**: - India has huge population of around 1.3 billion. To need to meet with basic necessities of this huge population alone would trigger demand for several goods and services – food, medicines, transportation, other essential goods like gas, electricity, water etc. and supply services of all this. Leave aside comforts and luxuries, these basic needs alone would push economic momentum to a considerable extent.
- b) **Untouched Rural Economy**: - By and large rural parts of India have not been seriously affected due to Corona. India is an agrarian economy. Its 7.39% GDP is based on this economy. (Source: - Statisticstimes.com). About 65.97% of total population lives in rural areas and is dependent upon agriculture. This

segment is strong enough to maintain level of demands for various goods and services. This would put back economic cycle back to normal gear.

c) **Network of small-scale industries**: - There is a big network of small-scale industries in India as against giant companies abroad and especially in China. Smaller the size, easier to adjust with changing scenario. These SSI units have comparatively smaller loan obligations, small number of workforce and lesser overheads. They have ability to cope up with any changing situation.

d) **Large number of small traders**: - Against big malls and chain of marts in other countries, there is a large number of small traders which are found at every corner of any town or village. Just like SSI units in manufacturing sector, these small units of traders have leverage over big malls, marketing companies chains etc.

e) **Younger population**: - Any country's ability and potential for growth is determined by the size of its young population. In India the concept of youth population adopted refers to the age group of 15-34 years. The share of youth population in total population has been increasing continuously from the level of 30.6% in the year 1971 to 34.8% in the year 2011. India is expected to have 34.33% share of youth in total population by 2020. This youth power will not only contribute to production of goods and services but also keep the demand levels at reasonably growing pace. (Ministry of

Statistics and Implementation of Programmes, Govt. of India)

IV. **POSITIVE FACTORS FOR INDIA:**

- Main feature of economic changes is that when one sector / activity takes a beating, some other sector / activity gets boosting. In my opinion India could be benefited in the following manner: -

a. Emerging Global manufacturing hub: -

Due to various reasons and especially for hiding corona outbreak for a considerable time by China, countries all over the world are now looking for alternate global hub for their manufacturing needs. They are looking at India seriously for this shift. While writing this article, Japan already announced a package of US \$ 1.2 B for Japanese companies to shift their manufacturing requirements out of China. On the other hand Chief Minister of Uttar Pradesh has already invited foreign companies to establish their manufacturing units in U.P. by announcing various incentives.

India has cheap and skilled labour, abundant natural sources, reasonably established infrastructural facilities and favourable climatic conditions which are generally not very extreme. Due to all these factors, India is very likely to emerge as global hub to supply various industrial and other products to many countries like Japan, South Korea, U.S.A., U.K. etc.

b. Falling crude oil prices: -

Due to undeclared business war between Russia and Saudi Arabia, there has been considerable drop in crude oil prices in last couple of months. Due to Corona effect, world over demand for crude oil has also gone down considerably. Indian has to import crude oil and pay for the same from various countries. During the F.Y. 2018-19 India paid \$ 112 B for import of crude oil. (Source – *Economic Times*). However due to falling prices of crude oil, import bill is expected to reduce at least by 6% - 7% during the current financial year. This reduction in import bill for crude oil would provide great relief to India so far as balance of payment is concerned.

c. Rising exports of medicines and other medical items: -

Corona has paved the way for sharp increase in exports of pharmaceutical products like masks, sanitizers and especially medicines. Of late India has lifted restrictions on 24 medicines for export purposes, including hydroxychloroquine and paracetamol. It is expected to earn additional foreign exchange and business income for India. Similarly some Indian pharmaceutical companies have already started research work on inventing vaccine medicine to treat corona. It is expected to come out in about 6- 8 months. All these factors are expected to contribute to considerable increase in exports of medicines and medical items.

d. Ancient life science of India: -

World over the belief is rising in Indian conventions like Namaskar

instead of shake hand and Ayurvedic medicines which are believed to be enhancing immunity, a very important tool in present corona threat. It is very likely that in future also these products would be accepted by other countries on continuous basis, provided standardization, scientific production process etc. are undertaken by Indian companies.

e. Weather and immunity levels: -

India has hot weather in many parts. Presently summer is underway when temperatures are on rise in almost all parts of India. It is expected that these rising temperatures would help kill corona virus. Similarly, in general Indians have better immunity over other people in developed countries and especially those countries where temperatures are generally very low. These factors are expected to contribute to early arrest of Covid-19 spread in India.

f. Strong I.T. companies' network: -

India has enviable network of I.T. companies capable of providing solutions to almost any problem. Going back to the time when Y2K problem was horrifying US economy, Indian I.T. companies provided solutions to the same. Due to contagious nature of Corona virus, people are asked by government to work from home. This is putting a lot of pressure on present internet infrastructure. Group discussions, video conferencing and even educational activities are being

carried out through internet. Indian IT companies have very good opportunity to provide more reliable, dependable and cheaper IT solutions for such activities. Ministry of Electronics and Information Technology, GoI, has officially asked I.T. companies to develop more sustainable and dependable platform to compete and replace Zoom app. There is also growing need and demand for dependable, cheap and sustainable hardware for these new requirements.

Medical research and medical tourism: -

There are many research institutes in medical field in India – both in Government as well as in private sector. Many of them have already started research to find out vaccine / medicine on corona. Medical field in India is well aware that Covid-19 may be followed by Covid-20. It is necessary to continue with scientific medical research activities to fight with any future recurrence of similar type of virus.

Medical treatment in India is comparatively much cheaper and dependable than developed countries. Medical staff looks after patients with more affinity than other countries. Expensive medical treatment abroad is likely to pave the way in bigger manner for medical tourism in India. However, our medical field, hospitals, other ancillary facilities like food for patients, day care facilities etc. should be well organized to cater to these requirements. Similarly, India needs to advertise for its medical capabilities and availability of cost-effective treatment.

g. Courier and home-delivery services: - Due to Covid-19, social distancing, quarantine and isolation have become today's buzz words. In near future also, public places would be undergoing certain restrictions at for some more period. Like hotels will be permitted only for deliveries of food parcels, and not for providing sit and eat facilities. Due to this it is expected that courier and home-delivery services industry will see sharp increase in their businesses.

h. E-entertainment: - There is sudden and sharp increase in demand for entertainment through internet and television. Companies like Netflix are gainers due to e-series and demand for other e-entertainment products. There is also good demand for e-sports activities. Probably entertainment industry in India would take a different shape in near future. This industry is likely to see good and bright future.

i. Brain-gain: - Because of frightening situation in developed countries – especially USA, Spain, UK, Germany - Indians who have been working there, wish to return to India. It is likely that India may witness *brain-gain* (against brain-drain) in near future. This well-educated, trained and experienced workforce would help India in gearing up its economic developmental activities, provided the Government takes appropriate steps to provide them conducive environment and appropriate infrastructural facilities to stay and work in India.

Due to all above factors I hold an optimistic outlook for India and Indian economy. However, it is not to be forgotten that India would face some challenges as well in this process, which in brief are as follows: -

V. CHALLENGES BEFORE INDIA: -

a. Financial crunch: -

Manufacturing industries, service industries are all badly hit by lock down for last one month or so, which is expected till another half month. During this period, industries and businesses have lost turnover and resultant profits. Contrary to this, they are expected to continue employment of all employees, to pay their regular salary for locked down period, and also pay for taxes and other overheads. This put together has placed tremendous burden on industrial and business sector, especially MSME entities. Non-recovery of past dues would create financial and liquidity shortage for them. Banks and financial institutions are expected to take a major heat of this locked down situation since Reserve Bank of India has announced moratorium of three months till June 2020.

The Government's non-productive expenditure on providing necessities to needy and poor people, administrative expenses, expenses on maintenance of law and order situation have gone up considerably. Since it is a question of survival of people in India, Government is forced to spend considerable amounts on these issues. All this is expected to result into lower GDP, lower pace of economic growth and disturbed financial markets at least for next six months or so.

b. **Loss of jobs:** -

The process of trimming of workforce has already begun even in organized sector. Labourers in unorganized sectors are badly impacted. People working on daily wage basis are finding it extremely difficult to maintain themselves since no work is allowed during lock down. It is feared that due to increased costs and reduced turnover during F.Y. 2020-21, many employers would resort to reducing number of employees. If this fear comes true, there will be big problems of socio-economic nature. It is expected that this gap would be filled by Government and Government organizations by undertaking / continuing with large infrastructural projects.

c. **Losses to travel and transport industry:** -

Travelling has been totally banned except for staff rendering essential services. Even after lifting of lock down restrictions, people are expected to be more cautious in travelling, at least for few months. Put together it will be about 5-6 months loss to travelling industry. Again, there will be some restrictions like social distancing and resultant lowering of capacity utilization. This is bad news for public sector as well as private sector travel and transport industry. It is likely to result in higher costs for both travel and goods transportation.

d. **Loss to tourism industry:** -

Due to recessionary conditions European and other developed countries were facing serious threat to tourism industry for last few years. However, Indians were on the spree of domestic as well as international tourism. Now, due to Covid-19 threats and increased fares etc. Indians would also postpone, tourism for few more months.

e. **Sports activities and related businesses:** -

World over many sports events have already been cancelled due to Covid-19. Notable are Olympic Games, Wimbledon Tennis tournaments, US Open, French Open tennis championships, T-20 World Cup Cricket International tournament etc. Due to all these cancellations, organizers are going to suffer huge losses (Wimbledon is an exception to this, due to proper insurance cover). Entire turnover of lodging, boarding, travelling etc. which sports industry contributes, would be lost in F.Y. 2020-21 at least for half year.

f. **Automobile sector:** -

There is a big debate about future of auto industry. Companies all over the world are in a mood of promoting 'work-from-home' culture in future also since it is saving lot of costs for them including employees transportation, office expenses, subsidized canteen facilities, saving in electricity bills etc. Pollution is another important factor which is having its toll on auto industry. In many countries there is already saturation of vehicles and long traffic jams are frequently experienced. Due to all these factors coupled with Covid-19

impact it is likely that auto sector would be badly hit.

g. **Real Estate / retails construction activities:**

Real estate business in residential segment had already reached saturation level and rates for housing had become un-affordable in near past. Due to over trading by builders and developers, the rates of residential homes had gone beyond affordable level. Therefore, Government had to come out with the measures like enacting Real Estate Regulation Act, The Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015, etc. Put together all these measures had already started showing slowdown in real estate industry and retail construction activities. Due to Covid-19, many labourers have returned to their homes in other states and others are in the mood of doing so. All in all, the effect would of continuing slow down in this sector.

VI. **NEW NORMAL:** -

New Normal is a term in business and economics that refers to financial conditions following the financial crisis of 2007-2008 and the aftermath of the 2008-2012 global recession. *The term has since been used in a variety of other contexts to imply that something which was previously abnormal has become commonplace.* (Source – Wikipedia). In simple words, a thing which was being considered as abnormal till yesterday, would be considered as normal from today, due to certain drastic conditional changes. For instance, physical meeting of directors would be held by maintaining distance of say three meters due to required principle of

social distancing. Naturally this would require changes in sitting arrangements for such meetings. Probably physical meetings of directors and members would be dispensed with, for some time till normalcy is restored. Such changes can be termed as new normal.

It is expected that in many fields and in case of many routine affairs, we would experience 'new normal' in near future.

VII. **ROLE COMPANY SECRETARIES HAVE TO PLAY:** -

Company secretaries perform key role, not only in the area of compliance, but also in liaisoning among various departments within and outside the company, planning, forecasting and especially advising management of the companies. Post Covid-19 days are going to be very volatile. It is expected that some business activities would be badly hit while there will be opening of new business segments or improved versions of some existing business segments.

Company Secretaries are expected to play a key role, in analysing this volatility, factors affecting sustainability of industry and business, foreseeing changes and changing business models and accordingly advising management for diversification, modification or closure of business activity, relocation of business, adopting new strategy etc. It is a complex process of analysing key volatile factors and also in judging probable changes in near future.

Government is coming out with several financial and economic measures to

keep the pace of economic activities, make industry and business sectors more comfortable and confident, to ensure survival and welfare of workforce and in general to make Indian economy more competent globally. Various schemes are being announced like EMI moratorium, ease in reckoning NPAs, lowering margin for working capital eligibility and so on. C.S. has to study all these government measures and schemes, to come out with proposals to bail out their companies, to make actionable suggestions to the management and to make the managements to adhere to the ethical codes of conduct like non-retrenchment of workers, payment of salaries and remuneration to them for lock-down period and so on, without adversely affecting company's financial position. C.S. will have to use all the tools and expertise available at their disposal including in the areas of finance, taxation, laws, management, etc. and to put together the same for ultimate benefit of their companies or clients. It is also very important for C.S. to help the management in maintaining positive outlook and balance activities accordingly. Briefly we can say that C.S. can play an important role in making industry and business capable enough to win over Covid-19 challenge.

Like established theory of economic cyclical changes, this downfall of economies will also see the end of this dark tunnel. Mankind typically lives on hope and only hope can stimulate efforts to come out of such difficult times. I am sure this pandemic situation will come to an end very soon and we all will be back to our normal life. Till then, stay at home, stay safe.

IMPACT OF RECENT LOCKDOWN ON
THE INSOLVENCY AND BANKRUPTCY CODE REGIME



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Owing to the unprecedented lockdown situation that has taken place all over the world, the business and economies have almost come to a standstill. The supply chain is disrupted, there is huge threat of job loss and risk of companies defaulting in repayment of credit facilities.

Various governments have brought in a number of economic measures to try and bring the businesses out of these economic crises. These measures range from pumping in more money in the economy to grant moratorium in repayment of loans to making changes in the laws to prevent businesses from going bankrupt or closing down and consequent loss of jobs for hundreds of workers.

In India, the Central Government has brought in a slew of measures and stimulus package for the Indian economy while making changes to various laws by relaxing due dates or granting subsidies or moratorium.



Ms. Sanjana Raman
(CS Student)

One of the biggest fear of businesses is that the lack of economic activity is likely to raise the risk of insolvency and / or closure of businesses. The Government has brought in a number of relaxations / moratoriums for businesses to quell these fears. This article attempts to discuss some of these measures.

Judicial Stand: Supreme Court of India and other subordinate courts/tribunals
In view of the difficulties being faced by litigants across the country in filing their petitions/ applications/ appeals / all other proceedings within the period of limitation prescribed under the general law of limitation or special laws for both Centre and State laws, the Supreme Court of India, in a suo-moto writ petition dated 23 March 2020 directed that, the period of limitation in all such proceedings irrespective of the limitations prescribed, whether condonable or not, shall be extended with effect from 15 March 2020 until further orders.

Similarly, Hon'ble NCLAT, vide its orders dated 30 March 2020, has suo motu passed the following orders:

Excluding the period of lockdown from the Corporate Insolvency Resolution Process

extending the interim order / stay granted by the NCLAT in any matter under the Insolvency and Bankruptcy Code, 2016 (IBC) shall continue till next date of hearing

extending the interim order / stay granted by the NCLAT in any matter under Companies Act shall continue till next date of hearing

extending the interim order / stay granted by the NCLAT in any matter under the Competition Act 2002 shall continue till further orders

In case of expiry of period of Fixed deposit, the concerned bank shall renew the same by six months.

For the need of social distancing, the NCLAT and NCLT benches across India have decided to adjourn all the matters pending before them, except the very urgent ones, until further orders or in some cases, are hearing matters through video conferencing.

IMPACT: These orders have attempted to ease the confusion and practical issues that may arise in implementation of various orders passed by these courts in the absence of appropriate directions / lack of hearing.

Regulatory Approach: Reserve Bank of India

The RBI, in its COVID-19 Regulatory Package dated 27 March 2020, applicable to all commercial and cooperative banks, All-India Financial Institutions and Non-Banking Finance Companies (including Housing Finance) has permitted all term loans to be granted a moratorium of three months for payment of all instalments that are due during the period 01 March 2020 to 31 May 2020. Interest however, shall continue to accrue during this period. In respect of working capital facilities granted in the form of Cash credit or overdraft, the institutions are permitted to defer the recovery of interest applied during the aforementioned period.

Note: A petition has been filed in the Supreme Court seeking a direction to the Government of India and RBI to waive off the accrued interest on term loans during the moratorium period of March 2020 to May 2020.

Lending institutions are permitted to recalculate the 'Drawing power' in order to ease the financing of working capital by either reducing margins or reassessing working capital cycles. However, the same shall not be treated as concession or change in terms and conditions of loan agreements.

The asset classification of term loans and working capital facilities as Non-Performing Assets (NPA) and Special Mention Accounts (SMA) respectively shall be solely determined on the basis of these revised due dates and repayment schedules.

The rescheduling of payments shall not be regarded as 'default' for the

purposes of reporting to Credit Information Companies (CICs).

Lending Institutions are required to frame Board approved policies for providing the aforementioned reliefs to the eligible borrowers.

In cases where the exposure of a lending institution to a borrower is Rs. 5 crore or above as on 01 March 2020, the bank shall develop an MIS on the reliefs provided to the borrowers regarding the nature and amount of relief granted for borrowings and credit facilities.

IMPACT: This is expected to help hundreds of businesses facing difficult times which can avail the moratorium and reorganize its business once the worst of the pandemic is over.

Legislative Approach: Amendment to IBC

The MCA has brought a notification dated 24 March 2020 by which the minimum amount of default under the IBC is increased from Rs. 1 lakh to Rs. 1 crore.

IMPACT: Increasing the limit will help smaller businesses to avoid action under the IBC for temporary difficulties of non-payment.

Amendment is brought to the CIRP Regulations 2016, effective 29 March 2020 by inserting new Regulation 40C and stating that the period of lockdown shall not be counted in relation to CIRP Process. The said amendment is published in the Official Gazette on 20 April 2020.

Amendment is brought to the Liquidation Regulations, 2016, effective 17 April 2020 by inserting new Regulation 47A and stating that the period of lockdown shall not be counted in relation to liquidation process. The said amendment is published in the Official Gazette on 20 April 2020.

IMPACT: On account of the lockdown, the Resolution Professional / Liquidators will not be able to carry out their duties under the Code and there are chances of delays and / or non-compliances. To ease the difficulties of these professionals, the amendments state that in case such professionals are not able to carry out their duties owing to the lockdown, this period shall be excluded from the period of CIRP / liquidation.

As per various news reports, it is understood that the Cabinet has decided to suspend Section 7, 8, 9 and 10 of the IBC for a minimum period of 6 months which may extend upto one year. The ordinance / amendment is yet to be brought in.

IMPACT: This will ensure that no new case is filed under IBC by financial, operational creditors or by the company itself. This will give a breathing time to the businesses to get back on their feet without the fear of insolvency. However, in cases where the date of default is before December 2019, it can be said that the default is not on account of the pandemic. Hence, the creditors should be allowed to file for insolvency in such cases. The government will have to consider such aspects relevant to all

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stakeholders before bringing the amendment.

Conclusion:

Bringing in various measures to help keep the economy afloat is the most urgent and important need of the hour. The government has come out with

various measures and is expected to continue to do so till this pandemic is brought under control. Lives in general and businesses in particular may not be the same again. Hence, every effort should be made to ensure that businesses are saved along with the lives.

PERFORMANCE OF A CONTRACT UNDER COVID-19



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The unexpected coronavirus pandemic (COVID-19) has disturbed our personal, professional, social, financial, and commercial lives at all levels. It has almost posed a threat to human life across the world. The impact of COVID - 19 on the performance of contractual obligations by the binding parties during this period is either impossible or next to it.

Section 2 (h) of the Indian Contract Act, 1872 (“Contract Act”) defines the term “Contract” as “an agreement enforceable by law”. The definition decides that a Contract is basically an agreement that binds the parties legally. Section 2 (e) of the Contract Act defines “Agreement” as “every promise and every set of promise, forming the consideration for each other”. In other words, Agreement occurs when two same separate minds bring upon a consensus for a definite purpose or an objective to be accomplished forthwith. Section 2 (b) of the Contract Act defines promise as “a proposal (offer) when accepted becomes a promise.”

In the event of impossibility of execution of contractual duties and further breach of its provisions, there arises a need to look at its remedial measures.

One such remedial measure is stipulated under Section 56 under Chapter IV of the Contract Act which deals with circumstances under which a party may be relieved from the liability of non - performance of any of its contractual obligations. Section 56 reads as under in detail with certain illustrations:

Section 56: Agreement to do impossible act

— *An agreement to do an act impossible in itself is void.*

— *Contract to do act afterwards becoming impossible or unlawful. A contract to do an act which, after the contract is made, becomes impossible, or, by reason of some event which the promisor could not prevent, unlawful, becomes void when the act becomes impossible or unlawful.*

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

promisee sustains through the non-performance of the promise.

As stated above, Section 56 would stand as one such remedy to save the party to perform obligations which are impossible to be performed under a contract. It is pertinent to state that majority of the contracts expressly contain the terms and conditions on which the contract would stand deferred or adjourned, or in other words, the contract would get rescinded under its own terms, by itself.

Another such provision is given under Section 32 occurring under Chapter III of the Contract Act as reproduced below:

Section 32: Enforcement of contracts contingent on an event happening

— *Contingent contracts to do or not to do anything if an uncertain future event happens cannot be enforced by law unless and until that event has happened. If the event becomes impossible, such contracts become void.*

Possibly, there may arise situations where the performance of a contract would cease to operate due to the unforeseen events. COVID-19 falls under the said category of unforeseen events.

Hence, in almost all the agreements the concept of “Force Majeure” (“FM”) is provided to automatically rescind the performance of the contract on happening of such contingent events.

In the initial phase of COVID-19 being declared as a pandemic, an Office Memorandum No. F. 18/4/2020-PPD titled ‘Force Majeure Clause’, was issued by Department of Expenditure,

Procurement Policy Division, Ministry of Finance on 19th February 2020 detailed as under:

“A Force Majeure (FM) means extraordinary events or circumstance beyond human control such as an event described as an act of God (like a natural calamity) or events such as a war, strike, riots, crimes (but not negligence or wrong - doing, predictable / seasonal rain and any other events specifically excluded in the clause). An FM clause in the contract frees both parties from contractual liability or obligation when prevented by such events from fulfilling their obligations under the contract. An FM clause does not excuse a party's non - performance entirely, but only suspends it for the duration of the FM. The firm has to give notice of FM as soon as it occurs and it cannot be claimed ex - post facto. There may be a FM situation affecting the purchase organisation only. In such a situation, the purchase organisation is to communicate with the supplier along similar lines as above for further necessary action. If the performance in whole or in part or any obligation under this contract is prevented or delayed by any reason of FM for a period exceeding 90 (Ninety) days, either party may at its option terminate the contract without any financial repercussion on either side.”

A typical force majeure clause drafted in most contracts or agreements reads as below:

“None of the Parties shall be liable for any delay, failure in performance, loss or damage due to Force Majeure events. During the performance of the Agreement events of Force Majeure may occur, such as, but not limited to, war, fire, flood,

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earthquake, accident, riot, strike, explosion, lockout, Act of God, act of Government authority, accidents and/or damage, decisions from the Customer, or any event beyond the reasonable control of any of the Parties, which by their effects render impossible or hinder the performance of any obligation or the exercise of any rights under this Agreement or the normal operation of the Company's industrial installations, or cause the failure or omission to comply with this Agreement."

Specifically, the office memorandum provides that COVID-19 should be considered as a case of natural calamity and thereby, the force majeure may be invoked, wherever considered appropriate. However, as referred in the memorandum, the performing parties will have to follow due procedure and fulfil the formal requirements to rescue themselves from non – performance of contract and invoke force majeure clause. For example, the party has to issue a notice informing the other party that a force majeure event has occurred on happening of an unforeseen event. Existence of remedies may first be looked into the contract or the agreement itself and thereafter, the provisions of the Contract Act must be looked into so that the binding nature of any such memorandum would not come up for question in case of any future dispute.

Here, the vital feature is to establish direct connection between the event and the impossibility of performance in order to prove that the event is the only cause of incapability of the party to perform under the contract.

However, it is pertinent to note that its interpretation and implications in the judicial system post lockdown would

probably differ on case to case basis as in one of recent judgments of the Bombay High Court in *Standard Retail Private Limited V/s. G. S. Global Corp*¹ the negotiation and encashment of Letter of Credit (LOC) was confined due to lockdown.

To inform, letter of credit is a letter issued by a bank to another bank (especially one in a different country) to serve as a guarantee for payments made to a specified person under specified conditions. The pronouncement seems to be one of its first, interpreting the FM Clause. In this case, the petitioners filed an application under Section 9 of the Arbitration and Conciliation Act, 1996 ("Arbitration Act"), which, inter alia, provides for interim measures by court) seeking to place restrictions on the banks on negotiation/encashment of letter of credits where in the sellers had already exported the goods from another country. In this case, the FM clause read as under:

"Article 11. Force Majeure: In the event of an Act of God (including but not limited to floods, earthquake, typhoons, epidemics and other natural calamities), war or armed conflict or serious threat of the same, government order or regulation, labor dispute or any other similar cause beyond the control of "Seller" or any of its suppliers or sub-contractors which seriously affects the ability of "Seller" or any of its suppliers or sub-contractors to manufacture and deliver

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<https://bombayhighcourt.nic.in/generatenewauth.php?bhpcpar=cGF0aD0uL3dyaXRlcmVhZGRhdGEvZGF0YS9vcmlnaW5hbC8yMDIwLyZmbmFtZT1DQVJCUDQwNDIwMDgwNDIwLnBkZiZzbWZsYWc9TiZyanVkZGF0ZT0mdXBsb2FkZHQ9MDkvMDQvMjAyMCZzcGFzc3BocmFzZT0xOTA0MjAwODQ2MzA=>

the “Goods”, “Seller” may, at its sole discretion and upon written notice to “Buyer” either terminate the Contract or any portion affected thereof by such event(s), or delay performance of the Contract, in whole or in part, for a reasonable period of time. Any such delay of performance by “Seller” shall not preclude “Seller’s” later right to terminate the Contract or any portion affected thereof by such event(s). In no event shall “Seller” be liable to “Buyer” or to any third party for any costs or damages arising indirectly or consequentially from such non-fulfilment of or delay in the performance of all or part of the Contract” (Ref.: From the Judgment)

The Bombay High Court mainly noted the terms of the FM clause as well as the notifications / memorandums as issued by Govt. of India and rejected the relief as prayed before. It ordered as under:

- The Letters of Credit are independent transaction with the Bank and the Bank is not concerned with underlying disputes between the buyers and the sellers.
- The Force Majeure clause in the present contracts is applicable only to the Respondent (the seller) and cannot come to the aid of the Petitioners (the buyer).

Hence, it can be said that mere presence of FM clause in the contract or the agreement is not sufficient to excuse both the parties from the fulfilment of contractual obligations. In other words, none of the events permitted the

petitioner (the buyer) to rescind its obligation.

Role of a Company Secretary in the matter of Contracts:

Company Secretary is considered as a master of drafting and interpreting legal documents. Most of the contracts in big corporates are vetted by Company Secretaries. Company Secretary can also be appointed as an Arbitrator under the Arbitration Act. It is important to state that post lockdown, number of cases will arise relating to possibility and impossibility of the contractual obligations and its impact on the business of several corporates. Company Secretary have a long way forward in the area of draft and vetting contracts and where dispute resolution mechanism is to be resorted to.

Conclusion:

In the light of the above provisions and judgment, it is pertinent to note that the performance of the contract and impact of COVID-19, whether it be partial or complete, shall be subject to the rationale and independent interpretation of terms of contract and provisions of Indian Contract Act, 1872. Mere existence of Force Majeure clause in a contract might not suffice to rescue one-self from fulfilment of obligations. The interpretation of contractual terms, like a list, is illustrative and not exhaustive.

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COMPILATION ON E-EGM



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This is the compilation of two circulars No. 14/2020 and 17/2020 issued in quick sequence on 8th April, 2020 and 13th April, 2020 by Ministry of Corporate Affairs to facilitate corporates to transact urgent business under the avowed objective of Ease of Doing Business.

MCA – Clarification on passing of Special Business by way of postal ballot/e-voting (Extra-Ordinary General Meeting) during COVID-19.

Owing to the current situation of COVID - 19 and based on several representations being made MCA by way of circular No. 14/2020, dated 08th April, 2020 which was further clarified vide Circular No. 17/2020

dated 13th April, 2020 enumerated the following relaxations **for passing Resolutions** through postal ballot/e-voting.

Accordingly, an Extra-Ordinary General Meeting (“EGM”) can be held for urgent matters only under Special Business required to be transacted on or before 30th June, 2020 or till further orders, whichever is earlier.

This relaxation is not available for Annual General Meeting as it deals with the Ordinary Business.

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A. For Companies that are required to provide e-voting facility under the Companies Act, 2013(“Act”), or any other Company which has opted for such facility: (e-voting is compulsory for Equity Listed Companies and Company having 1000 members or more): -

Sl. No.	Relaxations	Description or Rule of Relaxations for holding EGM for Urgent Matters only	Remarks
1.	Object of Relaxations	Allow urgent matters to be transacted while ensuring social distancing	
2.	E-Notice	Notice to contain all details of manner and framework and instructions to participate in the meeting. Helpline number to be made available for any query.	
		Notice to be sent through email registered with Registrar and Share Transfer Agent or Depository or Depository Participants	To the extent possible shareholders may be contacted to provide email ID.
		Notice to be displayed on the Website of the Company (if any) and intimated to Stock Exchange (for listed Companies).	
		Along with other details Designated E-Mail address to be mentioned through which sense of the meeting is to be ascertained.	
3.	Public Notice	To be published as prescribed under Rule 20(4)(v) of the Companies (Management and Administration) Rules and in particular followings:- a) EGM is convened through VC or OVAM in compliance with the applicable provisions of	

		<p>the Act read with the circulars dated 8th April, 2020 and 13th April, 2020</p> <p>b) Date and time of EGM</p> <p>c) Availability of copy of notice on the website of the Company and Stock exchange.</p> <p>d) Manner in which Members holding shares in physical form through remote e-voting or e-voting at the time of VC or OVAM</p> <p>e) How the member can get his/her email registered with the Company if not registered with the Company</p> <p>f) Any other details considered necessary by the Company</p>	
4.	Venue/Facility	EGM can be held through Video Conference (“VC”), Webex or any Audio-Visual Means (“OAVM”) that enables two-way conferencing to allow participants to pose questions.	
5.	Chairman	<p>a. As provided in the Articles.</p> <p>b. If no provision in the Articles and members are less than 50 then Company Secretary or any KMP should get Chairman elected from amongst the Directors or Members present.</p> <p>c. If it is likely that more than 50 members may remain present and there is no provision for Chairman then in that event it is suggested to include one of the Agenda for appointment of Chairman.</p>	Provision in the Articles and/or S. 104 of the Act.
6.	Commencement	Chairman to ensure and get the facts recorded that due care has been taken in the circumstances to ensure participation of the members and their voting on the items mentioned in the Notice.	

7.	Participation	Designated E-mail Id of the Company to be provided for members to pose questions even before the meeting or communicate through emails their assent or dissent, as the case may be.	
8.	Capacity & Principle of First Come First Served.	Above facility should enable atleast 1000 members to participate on first come first serve basis.	
9.	Commencement and Closure	Above facility should enable the shareholders to join the meeting 15 mins prior to the scheduled time and should remain active 15 mins after closure of meeting.	
10.	Recording	Proceedings of a meeting to be recorded and the recorded transcript be kept in safe custody by the Company.	
11.	Website	Notice to be displayed on the Website of the Company (if any)	
		Recorded Transcript to be made available on the website, if any, of a Public Company	
12.	Time for holding EGM	Time of EGM should be scheduled keeping in mind the different time zones of members.	For members outside India.
13.	Exception to First Come First Served	Large shareholders (holding more than 2 % or more shareholding), Promoters, institutional investors, directors, KMPs, the Chairperson of the Audit Committee, Nomination and Remuneration Committee and Stakeholder Relationship Committee, Auditors, etc may be allowed to attend the meeting without the	

		restriction of first come first serve.	
14.	Counting quorum	Attendance of shareholders through VC or OAVM to be counted for purpose of Quorum.	Quorum as per the Act or Articles of Association
15.	E-voting	E-voting to be provided in accordance with the Act.	
		Shareholders who have not cast their vote through e-voting and who are not barred from voting can cast their vote at the meeting.	
		Chairperson to ensure e-voting system is available for the purpose of conducting poll during the meeting convened through VC or OAVM	No show of hands involved.
16.	Proxy	Proxy is not allowed since there is no physical meeting.	
17.	Authorised Person	Persons authorised in pursuance of Sections 112 and 113 to participate and vote in the meeting.	S. 113 of the Act.
18.	Attendance	At least one Independent Director (“ID”) (in companies required to appoint an ID) shall attend the meeting.	
		Auditor or his representative capable of being appointed as Auditor shall attend the meeting.	S. 146 presence of auditors.
		Institutional investors to encourage to attend and vote in such meeting.	New provision.
19.	Conducting and conclusion	As per the practice being followed for physical meeting. However, there may not be dais but Chairman, Company Secretary and ID may	Not part of the MCA circular.

		remain present keeping adequate distance.	
20.	Registrar of Companies	Resolutions passed at such meeting to be filed with the Registrar of Companies (“ROC”) within 60 days of the meeting.	
		Details filed with the ROC to include the mechanism provided at the meeting along with provisions of the Act and rules complied at the meeting.	

B. For Companies not required to provide e-voting facility under the Act:

Apart from the above mentioned points following to be adhered to :

1. Company to contact members over telephone or any other mode of communication for registration of their E-mail ID if not available with it or RTA or Depository Participants.
2. Company to provide a designated email address to all members at the time of sending the notice for members to convey their vote or poll at the meeting
3. Confidentiality of the password and other privacy issues associated with designated email address shall

be strictly maintained by the Company.

4. Publishing “Notice of Proposal to convene Extra Ordinary General Meeting” in widely circulated vernacular newspaper and English newspaper widely circulated preferably in the electronic version also giving following details:
 - a. Intimating intention of the Company to convene Extra Ordinary General Meeting through VC or OVAM within three days of publication of Notice.
 - b. Requesting the members to furnish their E-mail ID and other contact details so as to enable them to receive notice, participate in the proceedings and cast their votes.
5. Where less than 50 members are present, members to cast their vote by

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sending email through the email id
registered with the Company.

6. In case, any notice is sent prior to the date of this clarification, a fresh notice with shorter duration with due disclosures as per this circular to be issued.

All Companies to note that any disclosures to made, inspection of documents, or authorisations by bodies corporates as required to under the Act be made **by way of electronic means.**

C. Through Postal Ballot

1. No need to send notices and other documents namely business envelope through the Post till 30-06-2020 or till further orders, whichever is earlier.
2. All the procedures and precautions will apply to the Companies as stated under Para A above.

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AN OVERVIEW OF DRAFT COMPANIES (CORPORATE SOCIAL RESPONSIBILITY POLICY) AMENDMENT RULES, 2020 AND RECENT CIRCULARS ISSUED BY MCA PERTAINING TO CORPORATE SOCIAL RESPONSIBILITY



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Background

The Companies (Amendment) Act 2019 received assent of the President of India on 31st July 2019. In this Amendment Act, various provisions of Companies Act, 2013 (the Act) were amended, one such amendment was made to sub sections 5, 6, 7 and 8 of Section 135 of the Act which are yet to be notified. Under the principal Section, prescribed Companies were required to spend 2% of the average of the three years' Net Profits of the Company on Corporate Social Responsibility (CSR) in areas prescribed in Schedule VII to the Act and also report on the compliance or

otherwise including reasons in the Directors' Report.

Post notification of Section 135 of the Act in the year 2014, it was observed that numerous Companies either did not comply with Section 135 of the Act in toto or partially complied with by spending a part of the amount that was mandated to be spent. Based on the data available on the National CSR Data Portal, the summary of CSR Compliance is as under:

	F.Y. 2014-15	F.Y. 2015-16	F.Y. 2016-17	F.Y. 2017-18
Total Number of Companies covered under Section 135 of the Act	16,548	18,290	19,539	21,397
Companies which have spent exactly as prescribed	1,090	1,401	1,957	1,256
Companies which have spent less than prescribed	3,157	4,712	4,601	3,453
Companies which have spent more than prescribed	1,701	3,075	3,653	4,228
Companies which have not spent	10,600	9,102	9,328	12,460
Percentage of Companies which have not spent	64.05%	49.76%	47.74%	58.23%

On an average, fifty-five percent of the Companies which were required to spend on CSR activities have not done so for the aforesaid years which defeats the very intent of Section 135 of the Act. The lack of a specific penal provision for the said section would also have played a part in Companies opting to simply not spend.

The Amendment Act of 2019 sought to penalise non-compliance with fine and imprisonment. Post enactment of the Amendment, industry represented to the Ministry to review the amendment and do

away the imprisonment as they felt the industry's primary objective was not CSR but business and thus the sections were not notified.

In the meanwhile, Government has introduced The Companies (Amendment) Bill, 2020 (Bill 2020) as Bill No. 88 of 2020 to further amend Companies Act, 2013 in Lok Sabha on 17th March 2020. The purpose behind Bill 2020 is to decriminalise various offences which can promote ease of doing ethical business, to amend various provisions of the Act and to

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recategorize certain compoundable offences mentioned in the Act in case of defaults which can be dealt with in-house adjudication framework without the requirement of the permission of the National Company Law Tribunal (NCLT), etc. The Bill 2020 removes imprisonment in certain offences along with the reduction in the amount of fine payable. The proposed amendments also aim to reduce the burden on the NCLT.

The gist of the Amendments in 2019 and that proposed in the Bill 2020 to Section 135 of the Act are as under:

- A new provision for transferring unspent CSR amount, if a Company fails to spend CSR amount, to a fund to be set up under Schedule VII of the Act, or, if a company holds amount for ongoing projects, then such amount to be transferred to Unspent Corporate Social Responsibility Account within a period of thirty days from the end of financial year and be spent on the projects within three years of such transfer.
- If a company fails to spend for ongoing project within a period of three years of transfer to unspent CSR Account, the same to be transferred to fund under schedule VII within thirty days of closure of Financial Year.

- In case of default, the Company shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to twenty-five lakh rupees and every officer of such company who is in default, shall be punishable with imprisonment for a term which may extend to three years or with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees, or with both.

(aforesaid provision has been proposed to be amended as under)

“If a company is in default in complying with the provisions of sub-section (5) or sub-section (6), the company shall be liable to a penalty of twice the amount required to be transferred by the company to the Fund specified in Schedule VII or the Unspent Corporate Social Responsibility Account, as the case may be, or one crore rupees, whichever is less, and every officer of the company who is in default shall be liable to a penalty of one-tenth of the amount required to be transferred by the company to such Fund specified in Schedule VII, or the Unspent Corporate Social Responsibility Account, as the case may be, or two lakh rupees, whichever is less.”

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- Amendment proposes to allow Companies, which have spent an amount in excess of the requirement provided under the said sub-section, to set off such excess amount out of their obligation in the succeeding financial years in such manner as may be provided by rules.

Here, it is interesting to note that, under amended Sub Section 7 of Section 135 (which is yet to be notified) it is stated that – if Company contravenes the provisions of sub-section (5) or sub-section (6), the company shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to twenty-five lakh rupees and **every officer of such company who is in default shall be punishable with imprisonment for a term which may extend to three years or with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees, or with both.** Under the Bill 2020, the provision for imprisonment for the persons who is in default of non-compliance has been proposed to be done away with a corresponding increase in the proposed fine.

- After sub-section (8), a new sub-section (9) to be inserted which provides

for constitution of CSR Committee only if the amount to be spent on CSR activities exceeds Rupees fifty lac. In other cases, the Board of Directors will discharge the responsibilities of CSR Committee.

Draft Companies (Corporate Social Responsibility Policy) Amendment Rules, 2020

The Ministry of Corporate Affairs (MCA) on 13th March, 2020 issued the draft Companies (Corporate Social Responsibility Policy) Amendment Rules, 2020 proposing amendments to Companies (Corporate Social Responsibility Policy) Rules, 2014 and invited public comments.

The current draft has numerous amendments including redefining Corporate Social Responsibility, enhancement of ceiling of administrative overheads, and accountability of the Board. However, the draft also deviates from the original set of ideas. It could be a challenge with proposed amendments. An overview of the proposed amendments is as under:

Sr No.	Rule Number	Proposed Changes	Impact
1	Rule 2, Sub Rule 1, clause (c) - Substituted	Change in the definition of Corporate Social Responsibility	<p>Existing proviso to Rule 6, now proposed to be included as part of the definition of CSR.</p> <p>Existing Rule 4(4), now proposed to be included as part of the definition and specifically excludes expenditure of activity undertaken outside India.</p> <p>Existing Rule 4(7) now proposed to be included as part of the definition.</p> <p>Existing Rule 4 (4) which provides that expenditure incurred only for the benefit for the employees of the company and their families is not CSR expenditure now proposed to be included as part of the definition</p> <p>However, any activity which benefits upto 25% of the employees is deemed a CSR Activity.</p> <p>Consider the following scenario:</p> <p>A company has 100 employees and 26 of its employees are beneficiaries of the Company's CSR activities. In this case, clarity needs to be provided as to whether expenditure on the 26th employee will not be admissible as CSR expenditure or expenditure on entire project will not be admissible as CSR</p>
2	Rule 2, Sub rule 1, clause (e) - Substituted	Change in the definition of CSR Policy	<p>This new definition is more elaborate than the previous definition. The CSR Policy to be a statement and direction of the Board of the Company based on the recommendations of its CSR Committee. The Policy to contain direction for selection, implementation and monitoring of the</p>

Sr No.	Rule Number	Proposed Changes	Impact
			activities to be undertaken in areas or subjects specified in Schedule VII of the Act.
3	Rule 2, sub rule 1, clause (f) – for original Clause (f) new clause is Substituted	Insertion of new definition of International Organization	International Organization has been defined for designing, monitoring and evaluation of the CSR projects. However, it further elucidates that it is subject to prior approval of the Central Government.
4	Rule 2, Sub rule 1, clause (h) - New definition	Insertion of new definition of Ongoing Projects	The term Ongoing Projects has been defined. (this allows for implementing projects having more than one-year up to 4 years to be undertaken by the Company)
5	Rule 2, Sub rule (1), clause (i) - New definition	Insertion of new definition of Public Authority	Public Authority has been defined. Curiously, the definition is borrowed from Right of Information Act, 2005.
6	Rule 3, sub-rule (2), clause (b) – Sub section extended	Sub section (2) to (8) of Section 135 of the Act	As Section 135 has been amended with the addition of 3 new sub-sections, Draft Rules prescribes provisions for compliance of the new sub-sections. The sub-sections provide for dealing with unspent CSR amount, fine in case of contravention and power to central government to give directions, respectively.
7	Rule 4(2)- Substituted	Changes in CSR activities in toto	CSR activity can be carried out directly by the Company or by a Company incorporated under Section 8 of the Act or by any entity established

Sr No.	Rule Number	Proposed Changes	Impact
	with Rule 4(1)		<p>under an Act of Parliament or a state legislature subject to the same being registered with MCA filing prescribed form.</p> <p>Restrictions on Track Record, experience etc of the Section 8 Company / entity has been done away with.</p>
8	Rule 4(3)- Newly Inserted		<p>International Organizations are allowed to help organizations for designing, monitoring and evaluation of CSR projects and also for capacity building of Company's employees for CSR.</p> <p>CSR spends can be done through international organization only after obtaining prior approval of the Central Government.</p> <p>This will allow International Organisations to undertake and implement CSR projects in India.</p>
9	Rule 4(4)- Newly Inserted		<p>The fact that the CSR is a Board Responsibility has been re-iterated with this Rule. Board has to satisfy itself that the funds have been spent properly.</p> <p>CFO of the Company or person responsible for Finance has to certify this fact to the Board.</p>
10	Rule 5(2)- Substituted	CSR Committee	<p>The CSR Committee is now required to formulate and recommend to the Board an annual action plan in pursuance of the CSR Policy and the action plan shall cover all the areas which were specified in the Rule 5(2)</p>

Sr No.	Rule Number	Proposed Changes	Impact
11	Rule 6- Omitted	CSR Policy	CSR Policy has been defined under Rule 2(e).
12	Rule 7 - Redefined	CSR Expenditure	<p>Limits of expenditure has been defined.</p> <ol style="list-style-type: none"> 1. Administrative Expenditure in the Company spending on CSR activities, it shall not be more than 5%. 2. In case the Company carries out Impact Assessment in a particular financial year (for Companies having obligation to spend CSR amount of Rs. 5 Crore or more), then the limit is set at 10%. <p>Surplus from CSR activities needs to be ploughed back or transferred to unspent CSR account.</p> <ol style="list-style-type: none"> 3. Assets can be created out of CSR Funds only if the assets are held by a Section 8 Company or by a public authority. <p>In respect of assets created out of CSR funds prior to the notification of the draft rules, the compliance under the revised rules should be made within 180 days of the notification of the revised rules or within 270 days based on an extension provided by the Board for reasonable justification. This implies that all such assets should be transferred to a Section 8 Company or a public authority within the time limits specified.</p> <ol style="list-style-type: none"> 4. Unspent balance, if any at the commencement of the Rules to be transferred to "Unspent CSR account" within 30 days from end of FY 2020-21. (Not clear whether the amount can be spent during

Sr No.	Rule Number	Proposed Changes	Impact
			the interim period till the date of transfer)
13	Rule 8 Sub rule 3-New Rule	CSR Reporting	Companies having obligation of average CSR spending of Rs. 5 crore or more in the immediately preceding three financial years needs to undertake impact assessment for its CSR projects and disclose the assessment in the Annual Report of CSR.
14	Rule 9	Display of CSR activities on its website	Disclosure of the Composition of CSR Committee, CSR Policy and Projects approved on the Website is proposed to be mandatory.
15	Rule 10- Newly inserted	National Unspent Corporate Social Responsibility Fund	Unspent CSR Funds are to be transferred to National Unspent Corporate Social Responsibility Fund.
16	CSR Format		The draft Rule has made CSR reporting format very detailed and elaborate.

MCA has issued Circulars providing clarification on CSR expenditure as part of the COVID 19 mitigation.

Salient features of Circulars issued by Ministry of Corporate Affairs on CSR:

General Circular no. 10/2020 dated March 23, 2020 -Clarification on spending of CSR funds for COVID-19

Funds may be spent for various activities related to COVID-19 under item nos. (i) and (xii) of Schedule VII relating to

promotion of health care, including preventive health care and sanitation and disaster management. Further, as per General Circular No. 21/2014 dated 18.06.2014, items in Schedule VII are broad based and may be interpreted liberally for this purpose.

Hence, spending on activities related to COVID-19 shall qualify as CSR expenditure if it is for the purpose of promotion of health care, preventive health care, sanitation and disaster management.

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eF. No. CSR-05/1/2020-CSR-MCA dated 28th March 2020

Office Memorandum – Clarification on contribution to PM CARES Fund as eligible CSR activity under item no. (viii) of the Schedule VII of Companies Act, 2013

Item no. (viii) of the Schedule VII of the Companies Act, 2013, which enumerates activities that may be undertaken by companies in discharge of their CSR obligations, inter alia provides that contribution to any fund set up by the Central Government for socio-economic development and relief qualifies as CSR expenditure. The PM-CARES Fund has been set up to provide relief to those affected by any kind of emergency or distress situation. Accordingly, it is clarified that any contribution made to the PM CARES Fund shall qualify as CSR expenditure under the Companies Act 2013.

Hence, contribution to PM CARES Fund shall qualify as CSR expenditure under the Companies Act 2013.

General Circular no. 15/2020 dated April 10, 2020 :COVID 19 related FAQs on CSR

Major clarifications among others includes:

- *Contribution made to ‘PM CARES Fund’ shall qualify as CSR expenditure under item no (viii) of Schedule VII of the Companies Act, 2013 and it has been further clarified vide Office memorandum F. No. CSR-05/1/2020-CSR-MCA.*
- *‘Chief Minister’s Relief Fund’ or ‘State Relief Fund for COVID-19’ is not included in Schedule VII of the Companies Act, 2013 and therefore any contribution to such funds shall not qualify as admissible CSR expenditure.*
- *Contribution made to State Disaster Management Authority to combat COVID-19 shall qualify as CSR expenditure under item no (xii) of Schedule VII of the 2013 and clarified vide general circular No. 10/2020 dated 23rd March, 2020. Ministry vide general circular No. 10/2020 dated 23rd March, 2020 has clarified that spending CSR funds for COVID-19 related activities shall qualify as CSR expenditure. It is further clarified that funds may be spent for various activities related to COVID-19 under items nos. (i) and (xii) of Schedule VII relating to promotion of health care including preventive health care and sanitation, and disaster management. Further, as per general circular No. 21/2014 dated 18.06.2014, items in Schedule VII are*

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broad based and may be interpreted liberally for this purpose.

wages to temporary or casual or daily wage workers during the lockdown period shall not count towards CSR expenditure.

- *Payment of salary/ wages in normal circumstances is a contractual and statutory obligation of the company. Similarly, payment of salary/ wages to employees and workers even during the lockdown period is a moral obligation of the employers, as they have no alternative source of employment or livelihood during this period. Thus, payment of salary/ wages to employees and workers during the lockdown period (including imposition of other social distancing requirements) shall not qualify as admissible CSR expenditure.*
- *Payment of wages to temporary or casual or daily wage workers during the lockdown period is part of the moral/ humanitarian/ contractual obligations of the company and is applicable to all companies irrespective of whether they have any legal obligation for CSR contribution under section 135 of the Companies Act 2013. Hence, payment of*
- *If any ex-gratia payment is made to temporary / casual workers/ daily wage workers over and above the disbursement of wages, specifically for the purpose of fighting COVID 19, the same shall be admissible towards CSR expenditure as a onetime exception provided there is an explicit declaration to that effect by the Board of the Company, which is duly certified by the statutory auditor. of wages, specifically for the purpose of fighting COVID 19, the same shall be admissible towards CSR expenditure as a onetime exception provided there is an explicit declaration to that effect by the Board of the Company, which is duly certified by the statutory auditor.*

ROLE OF COMPANY SECRETARY IN REVIVAL OF INDIAN ECONOMY

**CS Kruti Haresh Shah****Company Secretary and Compliance Officer****Sanghvi Brands Limited****(krutishah1990@gmail.com)**

2020 – a year where the Indian Economy will slip back into abyss. This ongoing pandemic of 2019 CORONAVIRUS disease (COVID-19) is also creating a global economic pandemic. The financial crisis impacted various economies across the world including USA, UK, Japan, China, France, and India. With weeks of lockdown it is getting difficult to trade-off between the economy and the lives and the Indian government is battling to safeguard its economy back.

COVID-19 IMPACT ON THE INDIAN ECONOMY

COVID-19 will be an economic tsunami for India. Even though the country may not slip into a recession, unlike the Eurozone, the US, or Asia-Pacific that have stronger trade ties to China, analysts

believe the impact on India's GDP growth will be significant.

India is currently in its 5th week of lockdown, that began on March 25, to contain the spread of the coronavirus. The fallout of the move will spill over to financial year 2021, which begins on April 1. In India, GDP growth is already at a decadal low and any further dent in economic output will bring more pain to workers who have seen their wages erode in recent times. India's GDP growth for the fiscal year 2019-2020 was estimated at 5 per cent and is forecast to slow down to 4.8 per cent for the current fiscal 2020-21.

GOVERNMENT SUPPORT

On March 26, 2020 finance minister Nirmala Sitharaman announced a 1.7 lakh crore package aimed at cushioning the disruption caused due to COVID-19. She

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said the relief package is aimed at shielding the poor during the ongoing COVID-19 pandemic. The package includes a mix of food security and direct cash transfer benefits to shield poor families during the lockdown.

REGULATORY MEASURES

Relief Measures for Corporate Affairs

There are many relief measures and extensions of deadlines for Companies set by the government.

- With the newly introduced scheme named “Companies Fresh Start Scheme, 2020” wherein any return or statement that is required to be filed in the MCA-21 Registry, irrespective of its due date, will have no fees for a late filing up until 30 September 2020. This will help the private sector companies to fill its long due compliance and get its records updated without paying any penal fees.

- The mandatory requirement of holding board meetings for Companies will be extended by a period of 60 days for the next two quarters.

- Applicability of Companies (Auditor’s Report) Order, 2020 will be made applicable from the financial year 2020-2021 instead of from 2019-2020. This will significantly ease the burden on

companies & their auditors for the year 2019-20.

- Independent Directors are required to hold at least one meeting without the attendance of Non-independent directors and members of management. For the year 2019-20, if the IDs of a company have not been able to hold even one meeting, it will not be viewed as a violation.

- Requirement to create a Deposit reserve of 20% of deposits maturing during the financial year 2020-21 before 30th April 2020 will have the deadline extended to 30th June 2020.

GST and Indirect Tax Measures

The Government of India has changed the dates for filing GST annual returns and indirect taxes to the last week in June with no interest, late fee or penalties.

SEBI Regulation

With the COVID 19 pandemic SEBI has provided temporary relaxations in compliance requirements for listed entities. SEBI further have also granted certain temporary relaxations from the regulatory provisions related to rights/public issuances by listed entities. This will help the listed companies to easy access of funding in the current scenario.

SEBI has also eased fulfilment of compliance and clarified that digital

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signature certifications can be used for any filing / submission to be made to Stock exchanges until June 30, 2020

Schemes to support MSMEs

MSMEs that are manufacturing products or providing services related to fighting the Coronavirus can apply for loans at a rate of 5%. There is another scheme to provide financing for the healthcare sector.

RBI And FEMA Laws:

The Reserve Bank of India has allowed all lending institutions to offer a three-month moratorium on repayment of term loans to its borrowers. Further, the rescheduling of payments will not qualify as a default for the purposes of supervisory reporting and reporting to credit information companies (CICs) by the lending institutions. Its a significant relief to the borrowers without affecting their liquidity moment where there is no business.

The Government of India with its financial regulatory body i.e. Reserve Bank of India its further tightening its regulations where Foreign direct investment (FDI) in India in most of the Sectors is allowed through Automatic route, the government vide its notification dated 23rd April 2020 amended the FDI policy that;

“Provided that an entity of a country, which shares a land border with India or the beneficial owner of an investment into India who is situated in or is a citizen of any such country, shall invest only with the Government approval”

With this move Government has mandated foreign investments from countries that share border with India to take prior approval, to prevent the opportunistic takeover of domestic firms amid COVID-19 pandemic under the FEMA law.

ROLE OF COMPANY SECRETARY IN REVIVAL OF THE INDIAN ECONOMY

India has emerged as the fastest growing major economy in the world as per the Central Statistics Organization (CSO) and International Monetary Fund (IMF) and it is expected to be one of the top three economic powers of the world over the next 10 years, backed by its strong democracy and partnerships.

With this COVID-19 hardship India's GDP growth is forecasted to slow down and if the lockdown continues for further weeks with no offsetting factors, annual GDP growth could be lower than it otherwise might have been.

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The Indian laws i.e. Companies Act, 2013 have already accorded an exalted status to a Company Secretary (CS) bracketing him/her as Key Managerial Personnel along with the Managing Director /CEO&CFO. The Insolvency Professionals, the Registered Valuers are other roles played by Company Secretaries., Role of Company Secretaries in providing and delivering their best of knowledge and expertise in the Corporate affairs matters can give cutting edge to all corporates in these crucial times.

It goes without saying that the development of any economy is sustainable only when the backbone is formed by a sound governance framework. CS as a governance professional is vital to nation building. A lot of activities by Company Secretaries fall within the ambit of the responsibility structure. From ensuring compliance with the applicable laws and secretarial standards to guiding the directors, from conducting secretarial audits to representing the company before Regulators, from obtaining requisite approvals from designated authorities to assisting the Board, the India surely witnesses a plenty of occasions where services of CS are solicited.

Role as an Advisor: Being the Key Managerial Personnel (KMP), it is the duty of the Company Secretary to advice

on good governance practices and compliance of Corporate Governance norms as prescribed under various Corporate, Securities and Other Business Laws and regulations and guidelines made thereunder which will not only empower the board /committees to pick up the corrective steps but also will uplift and deliver sustainable growth.

The main strength of CS lies in his/ her legal knowledge especially in the fields of business, corporate and monetary laws. CS is rightly the profession which can provide a single window in legal matters. Hence, it can be said that apart from being a corporate advisor, Company Secretaries are the watchdogs of a Company who are constantly updated about the changes in legislation and educating the Directors and management of the Company about such changes.

Role in Corporate Governance: Company Secretary is a vital link between the Company and its Board of Directors, shareholders, Government, and regulatory authorities. The profession of the Company Secretaries should follow the path of good corporate governance by ensuring that the Companies:

- run the business in accordance with the law not only through letter but through spirit of the law
- follow ethical practices in business,
- protect the interest of the investors,

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- maintain transparency and provide adequate information.

Role in reforming E-governance: With weeks of lockdown millions of people are working from home and the biggest blessed in this vulnerable time is Digitalization. In this new genre of digitalization and with the help of technologies and internet many people are connected across the globe.

In the current scenario, digitalization across the globe is changing the professional approach and leadership which leads optimum utilization of all resources. All professionals are changing their approach for achieving their objectives due to technological advancements. Although the digitalization created new challenges like cyber-crime, but new methods are emerging to tackle with these new challenges.

Company Secretary as a governance professional should help in reframing and building the e-governance system which can form the greatest asset of the economy

in the upcoming years. With better reforms and regulations for e-governance there would be great transparency and accurate information in the public at large.

Where the board meetings and general meeting are known transferring to digital platform, Company Secretaries ought to be very vigilant in setting up ethical and transparent system. As a governance professional its time that we re-module our traditional governance to completely digitalized governance as E-governance.

CONCLUSION

“Tough times don't define you, they refine you” ___ Carlos A. Rodriguez

With the spirit of this statement it is the time for all the Company Secretaries to rebound, reframe and rebuild themselves not to just built a great career but to be part of the new reforming India.

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RECENT CASES ON

INSOLVENCY AND BANKRUPTCY CODE 2016

Tayal Cotton (P) Ltd vs. State of Maharashtra

Case citation / Writ petition: Criminal Writ Petition 1437 of 2017

Decided on: 6 August 2018

Order passed by: Justice Mangesh S. Patil; High Court at Judicature at Bombay, Aurangabad Bench.

Facts in brief:

The petitioner company instituted a complaint under Section 138 of the Negotiable Instruments Act (hereinafter referred as N.I. Act for short) bearing SCC No.3197/2016 against the respondent no.2 company and the respondents 3 to 7 who are its Managing Director and Directors, in respect of a cheque for an amount of Rs.15,58,612/- issued by respondents 2 to 7 towards discharge of a civil liability. The learned Magistrate issued process under Section 204 of the Code of Criminal Procedure. Being aggrieved, the respondents 2 to 7 challenged the order of issuance of process by preferring Criminal Revision No.147/2016. In the meanwhile, the respondents 2 to 7 initiated insolvency proceeding in

Case No.CP /(IB No.20/BB/2017). In view of such proceeding, the respondents 2 to 7 submitted application (Exh.20) in the Criminal Revision and requested to keep the revision in abeyance/stayed till further order was passed in the insolvency proceeding.

The petitioner opposed that application by its Say (Exh.23) inter alia on the ground that in view of the Division Bench judgment of this Court in Indorama Synthetics India Limited Nagpur V/s State of Maharashtra and others; 2016 (4) Mh.L.J.249 while considering a similar provision contained in Sub Section 1 of Section 446 of the Companies Act it has interpreted the words 'Suit or other proceeding' contained in that Section as not to include a criminal complaint filed under Section 138 of the N.I.Act. The learned Additional Sessions Judge after hearing the arguments allowed the application Exh.20 filed by the respondents 2 to 7 and directed the revision to be kept in abeyance till further order was passed in the insolvency proceeding. Being aggrieved by the order, the petitioner has filed this Writ Petition under Articles 226 and 227 of the Constitution of India.

Issues were raised before the **Hon'ble High Court at judicature at Bombay, Aurangabad Bench**; that whether a matter in Criminal Revision be stayed during the pendency of an insolvency proceeding and can a criminal case continue even after Moratorium?

Judgment:

The Hon'ble Court concluded that as per Section 14(1)(a) of the Code, once the adjudicating authority declares moratorium for prohibiting institution of suits or continuation of pending suits or proceeding against the corporate debtor including execution of any judgment,

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decree or order in any Court of law, Arbitration Tribunal or other authority. It has been submitted that these words do not precisely restrict its operation to only civil proceedings, they are omnibus and even include a criminal proceeding including the one under Section 138 of the N.I.Act and a criminal revision arising therefrom. These words will have to be interpreted ejusdem generis with the words 'suits' used earlier thereto. So interpreted, the word 'proceedings' used therein and even the words 'order' and 'in Court of law' will have to be interpreted as a proceeding arising in the nature of a suit and orders passed in such proceedings and suits. Apart from the fact that the Legislature has not conspicuously used the words 'criminal' as an adjective to the word 'proceedings' and as an adjective to the noun 'Court of law', it must be assumed that the Legislature in its wisdom has consciously omitted to use such adjectives since it must have intended to prohibit only the suits and execution of the judgments and decrees or a proceeding of the like nature. Therefore, applying this principle of interpretation, one cannot put any other interpretation on this provision contained in Section 14 of the Code except that it only prohibits a suit or a proceeding of a like nature and does not include any criminal proceeding.

It further held that the criminal revision should not have been directed to be kept in abeyance by resorting to Section 14 of the Code. For that matter even the National Company Law Tribunal in its order in a proceeding under Section 10 could not have and has not specifically directed any prohibition against the continuation of a criminal proceeding.

The Writ Petition was allowed. The impugned order passed by the learned

Additional Session Judge is quashed and set aside, meaning thereby that the learned Additional Sessions Judge shall proceed with the hearing of the criminal revision and shall decide it in accordance with law.

Gouri Shankar Jain Vs. Punjab National Bank & Anr.

Case citation/ Writ Petition: Writ Petition No. 10147 of 2019

Decided on: 13 November 2019

Order passed by: Justice Debangsu Basak; Calcutta High Court.

Facts in brief:

The Petitioner was a guarantor of loan facilities taken by M/s Divya Jyoti Sponge Iron Private Limited from Punjab National Bank (Respondent No. 1). Company underwent Insolvency proceedings before the NCLT and subsequently vide an order dated 13 March 2018, a resolution plan in respect of the Company was admitted; in which payment of Rs. 34.25 crores to the secured financial creditors against an outstanding amount of Rs. 76.21 crores in full and final settlement of all the dues was provided. The Respondent No.1 thereafter, issued a notice to the Petitioner dated 26 March 2019 under Section 12(2) of the SARFAESI Act, 2002, on the basis of the guarantee. The Petitioner was also posted with an alleged default of Rs. 12,62,11,278/- towards Respondent No. 1 with CIBIL. Aggrieved by the same, the Petitioner filed a writ petition before the Hon'ble Calcutta High Court to remove the name of the petitioner from the list of defaulters maintained by CIBIL. Learned Advocate appearing for the petitioner submitted that, with the liability of the company to the first respondent being extinguished by virtue of the Resolution

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Plan sanctioned by the National Company Law Tribunal (NCLT), and the resolution applicant paying Respondent No.1 in terms of the Resolution Plan, the guarantee of the petitioner to the first respondent stood extinguished. The liability of the guarantor is co-extensive with that of the principal debtor, who is not having any liability towards Respondent No.1 subsequent to the payment in terms of the Resolution Plan. So, it cannot be stated that the guarantor, i.e. the petitioner, has any liability towards Respondent No.1. This raised the issue, whether the liability of a guarantor of a debt of a corporate debtor stands reduced /extinguished upon an Insolvency Resolution Plan in respect of the corporate debtor, being approved under the Insolvency and Bankruptcy Code, 2016; and what relief or reliefs were the parties entitled to? In support of such contentions, reliance was placed upon Sections 134,135 139 and 145 of the Contract Act, 1872.

The Court relied on the judgment of the Supreme Court in Maharashtra State Electricity Board Bombay VS Official Liquidator High Court, Ernakulam and Anr. Wherein it was held that, a discharge which the principal debtor may secure by operation of law in bankruptcy or in liquidation proceedings in the case of a company does not absolve the surety of his liability. In such case, the Supreme Court has considered the interplay of sections 128 and 134 of the Act of 1872. In the facts of that case, a company in respect of which a bank issued a guarantee in favour of the Electricity Board, went into liquidation. The Supreme Court has held that, the fact that the company which is the principal debtor has gone into liquidation would not have any effect on the liability of the guarantor.

Judgment:

In the given matter the Hon'ble Calcutta High Court, on 13 November 2019, held that, the Resolution plan was not in variation of terms of contract between the principal debtor and creditor, without the surety's consent, discharging the surety as to transaction subsequent to the variants or at all. Similarly, an action of a financial creditor u/s 7 of the Code was found not be construed as an action u/s 134 of the Act of 1872. An application under Section 7 of the Code of 2016 could not be construed to be a discharge of the surety in terms of Section 134 as well as under Section 135 and 139 of the Act of 1872. It was also found that, the implied promise recognized under Section 145 of the Act of 1872 is not impaired by any order that may be passed under the Code of 2016. The Hon'ble Court stated that, when a financial creditor approached NCLT under provisions of section 7 of the Code, it is done to exercise statutory rights. The contractual obligations between the financial creditor and the surety are not modified or obliterated or suspended by the eventual outcome of the proceeding.

Thus, the petition was dismissed, and the liability of the guarantor was held to have not extinguished upon approval of the resolution plan.

This judgment threw light upon certain points relating to Insolvency proceedings by stating that it's initiation is purely a statutory right, and not contractual. It also reveals that a resolution plan is not a compromise or composition or voluntary compromise with the Corporate Debtor, and does not materially vary the terms of the contract between the principal debtor and the creditor. It further clarifies the non-application of Section 14 of the Code

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(period of moratorium) to Personal Guarantors and that the existing contracts between the surety, principal debtor and the creditor remain unaffected during the period of moratorium. The judgment reiterates that Liquidation of Principal Debtor will not affect liability of Personal Guarantor and right of the creditor before insolvency shall remain unchanged.

Ultra Tech Nathdwara Cement Ltd. vs.

Union of India & Others

Case citation/ Writ petition: D.B. Civil Writ Petition No. 9480 of 2019

Decided on: 07 April 2020

Order passed by: Justice Sandeep Mehta, Justice Vijay Bishnoi;

Rajasthan High Court.

Facts in brief:

Bank of Baroda, a secured financial creditor, initiated action against Binani Cement Ltd, the Corporate Debtor, for non-payment of debt under Section 7 of the Code before the NCLT, Kolkata Bench. Ultra tech Nathdwara Cement Ltd. was one of the Resolution applicants in the CIRP of the Corporate Debtor, and approached the Rajasthan High Court by virtue of Article 226 of the Indian Constitution, on account of being aggrieved by multiple demand notices raised by the GST Department. The NCLT had duly approved the payment to be made by the Petitioner Company to all the stakeholders. The claims of the GST Department amounting to Rs. 72.85 crores were towards liabilities of excise duty and

service tax dues. The liquidation value of the Corporate Debtor as determined by the RP was Rs. 2300 crores, being much less than its outstanding debt and consequently, the liquidation value available to the Operational Creditors, including the GST Department, would be zero. The NCLAT vide order dated 14.11.2018, approved the Resolution plan of Ultra Tech. The Supreme Court, vide order dated 19.11.2018, affirmed the order of the NCLAT upon an appeal filed by Bank of Baroda. Thereafter, Ultra Tech took over the management and operations of the Corporate Debtor after receiving the final seal of approval of the resolution plan. The resolution plan was fully carried out and payments were made to all the creditors including statutory creditors. Upon numerous demands from the GST Department for the period from April 2012 to June 2017 and interest up to 25.07.2017, Ultra Tech responded stating that payment of dues as admitted by the CIRP, have been duly made and therefore the remaining claims stood extinguished in terms of the Resolution plan.

An issue appeared in front of the Hon'ble Rajasthan High Court on whether the Resolution plan approved by the COC is binding on the GST Department or not?

Judgment:

On 07 April 2020, Hon'ble Rajasthan High Court held that, the amendment to Section 31 of the Code, has unequivocally made the Resolution plan binding on the Corporate Debtor, its employees, members and all creditors including creditors including the Central Govt., any State Government or any local authority to whom a debt in respect of the payment of

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 dues arising under any law for the time being in force is owed. The legislative intent behind the amendment is providing indemnity to a successful resolution applicant against any government claims and ensuring running of the business of the Corporate Debtor on a fresh slate.

Accordingly, the impugned demand notices pending as on the date of finalization of the resolution plan were struck down. The notices of the GST Department were held to be illegal and cannot be supported.

JSW Steel Ltd. VS Mahendar Kumar Khandelwal and Others

Case citation: Company Appeal (AT) (Insolvency) No. 957 of 2019

Decided on: 17 February 2020

Order passed by: Chairperson: Justice S. J. Mukhopadhaya

**Member (Judicial):
Justice Bansi Lal Bhat;**

**National Company
Law Appellate Tribunal**

Facts in brief:

In the CIRP of Bhushan Power and Steel Limited (Corporate Debtor), the Resolution Plan submitted by JSW Steel Limited, the Resolution Applicant, was approved by the NCLT, Principal Bench, New Delhi vide order dated 05 September 2019 with certain conditions. Thereafter, the Implementation and Monitoring Committee of JSW Steel Limited was monitoring the change of the management. Subsequently, the Directorate of Enforcement of Central Government attached the assets of the Corporate Debtor

under Section 5 of the Prevention of Money Laundering Act, 2002. JSW Steel Limited preferred an appeal before the NCLAT challenging this act of the Directorate of Enforcement subsequent to the approval of the resolution plan. Section 32A of the Code provides that the liability of a corporate debtor for an offence committed prior to the commencement of the CIRP shall cease, and the corporate debtor shall not be prosecuted for such an offence from the date the resolution plan has been approved by the Adjudicating Authority under section 31, if the resolution plan results in the change in the management or control of the corporate debtor. It is stated that during the course of PMLA investigation, it came to notice that the Corporate Debtor and JSW Steel Limited are associated as shareholders holding 24.09% and 49% equity respectively in a Joint venture company namely ‘M/s. Rohne Coal Company Private Limited’. It was submitted by the learned counsel for the Directorate of Enforcement that under Section 32A (1), the liability of the Corporate Debtor shall not cease for the impugned offences under Prevention of Money Laundering Act, 2002 as the Resolution Plan approved by the Adjudicating Authority is not resulting in change in management or control of the Corporate Debtor to a person who was not a related party of the Corporate Debtor, for the reason that JSW Steel Limited’ is a ‘Related Party’ of the Corporate Debtor, being an Associate Company which has formed a joint venture company, namely, Rohne Coal Company Pvt. Ltd.

An issue was raised in front of the Hon’ble National Company Law Appellate Tribunal (NCLAT) for whether, after the approval of a Resolution Plan under Section 31 of the Code, the Directorate of

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 Enforcement can attach assets of the Corporate Debtor on alleged ground of money laundering by erstwhile promoters?

Judgment:

On 17 February 2020, the Hon'ble NCLAT held that, 'JSW Steel Limited' is not an associate company/ related party of the 'Corporate Debtor'. While 'Rohne Coal Company Private Limited' is an 'associate company' of the 'Corporate Debtor' as well as of the 'JSW Steel Limited', but by virtue of both having investment in such downstream joint venture company i.e. 'Rohne Coal Company Private Limited', the 'JSW Steel Limited' and the 'Corporate Debtor' do not become related parties of each other. To fall within the ambit of Section 32A (1) (a), a Resolution Applicant has to be either: (i) A promoter of the Corporate Debtor; or (ii) In the management or control of the Corporate Debtor; or (iii) A related party of the Corporate Debtor. In the context of the present case, the 'Resolution Applicant' does not fall in any of the aforesaid categories. It further held that, the Directorate of Enforcement in interpretation that Section 32A of the 'I&B Code' is prospective in nature and the benefit of such provision cannot be claimed as it is wrong and misplaced, and the same shall be applied retrospectively and that the ED while conducting investigation under PMLA is free to deal with or attach the personal assets of the erstwhile promoters and other accused persons, acquired through crime proceeds and not the assets of the Corporate Debtor which have been financed by creditors and

acquired by a bona fide third party Resolution Applicant through the statutory process supervised and approved by the Adjudicating Authority under the IBC.

Resolution Applicant is not in wrongful enjoyment of any proceeds of crime after acquisition of the Corporate Debtor and its assets, as a Resolution Applicant would be a bona fide asset acquired through a legal process. The tribunal concluded that, upon an acquisition under a CIR Process by a Resolution Applicant, the Corporate Debtor and its assets need not be subject to attachment by the ED after approval of Resolution Plan by the Adjudicating Authorities. The Union of India had unequivocally stated that after the completion of the corporate insolvency resolution process, there cannot be any threat of criminal proceedings against the Corporate Debtor or attachment or confiscation of its assets by any investigating agency after approval of the resolution plan.

After taking into consideration the submissions, order of attachment passed by the ED was stayed and the ED was prohibited from attaching property of Corporate Debtor without seeking prior approval of the NCLAT. The property already attached by the ED was directed to be realized in favor of the resolution professional immediately.

The Judgment passed by the NCLT, Principal Bench and NCLAT will not come in the way of the Directorate of Enforcement or the Serious Fraud Investigation Office or the Central Bureau of Investigation to proceed with investigation or to take any action in accordance with law against erstwhile promoters, officers and others of the Corporate Debtor.

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WORD GRID

Designed by CS Vikas Chomal

Answers to below mentioned clues are hidden in upward, downward,
crossword or in

reverse order in the Word Grid.

1. Top 500 listed companies are required to add Business _____
Statement in its Annual Report.
2. Blood of every business – Working _____
3. Left side items of T form of Balance Sheet
4. Key _____ Personnel
5. A pink news paper:- Business _____
6. _____ added Tax
7. A stage before bankruptcy
8. The ways of taking decisions in corporate world
9. Non public information could be Price _____ information
- 10.D of LODR
- 11.ICSI's First person's first name.
- 12.A strict no no for a Private co from public
- 13.Want to take a decision but without meeting - _____ No. 8 above
- 14.Not a blood hound
- 15.NCLT is a _____ judicial body.
- 16.No. 17 is an _____ under IBC.
- 17.I am a regulator for those going burst.....
- 18.I am the RBI of Capital Markets
- 19.Big boss of Companies in India
- 20.I am the _____ Authority after NCLT.

(How to solve the puzzle:)

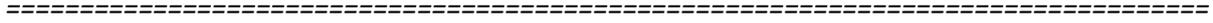
- 15.NCLT is a QUASI judicial body. The word Quasi is written in top right corner of the WordGrid in reverse order.

The solved Word Grid may be emailed to pdc.icsiwirc@gmail.com with a subject line – Answers to Word Grid. The first correct entry shall get a surprise gift.

Note: Solutions will be published in May issue of e-Focus.

ICSI WIRC Focus

April 2020



L	A	I	R	E	G	A	N	A	M	R	A	G	C	C	I	S	A	U	Q
A	T	H	H	C	I	B	B	B	E	E	S	D	A	D	B	A	S	D	F
S	Y	I	D	I	H	P	I	R	G	S	A	N	C	Y	B	E	F	U	G
D	P	S	N	R	F	K	U	Y	U	O	A	F	M	H	I	F	G	V	C
F	O	T	S	C	T	S	K	T	Y	L	A	U	T	H	O	R	I	T	Y
G	T	O	J	U	O	I	O	C	I	U	G	H	E	F	C	F	R	G	H
H	U	R	R	L	F	U	N	R	O	T	I	D	U	A	U	K	J	R	H
J	B	Y	C	A	D	E	U	Y	J	I	S	A	R	Y	R	E	X	C	V
K	A	S	R	R	V	R	E	S	P	O	N	S	I	B	I	L	I	T	Y
F	I	H	Y	L	H	J	K	E	N	N	F	H	A	U	T	H	O	R	I
D	F	I	O	I	G	M	T	Z	N	R	F	I	C	W	E	R	C	N	C
J	L	S	Y	O	O	A	L	C	N	H	H	S	M	K	E	L	S	F	L
V	N	V	D	L	L	N	I	D	G	T	C	H	J	V	L	O	T	I	T
I	D	D	J	L	P	G	R	E	U	L	A	V	I	J	L	Y	A	I	I
J	J	D	E	K	J	A	C	V	B	B	P	T	C	V	C	B	S	U	I
N	U	P	J	O	D	R	K	E	N	Q	I	D	E	C	I	O	A	S	D
D	P	G	S	N	J	I	I	Y	D	S	T	N	D	L	P	M	A	R	T
A	L	Y	A	J	I	A	B	K	N	W	A	T	I	E	R	A	T	E	U
U	O	T	J	U	K	L	E	E	B	D	L	T	D	F	F	D	S	A	L
M	S	S	R	K	T	R	S	L	S	S	Y	T	R	E	F	B	F	A	D

FOCUS CROSSWORD: VOL. II

Designed by CS (Ms.) Amita Viswakarma

							6			2							8
1	12							23									
																9	
					19										10		
								5		5				11			
20		22															
4									26								
			24		24												
		18				16			15								
3		21		13					9								
	15							17									
														14			
	7																
				25													

HORIZONTAL (ACROSS)	
1	As per Regu.44(4) of SEBI(LODR) 2015, this form should be sent to all holders of securities mentioning that the holder may vote. (9 Letters)
2	As per Companies Act,2013, issue of shares at_____ is completely prohibited. (8 Letters)
3	1st proviso to Sec.2(55) of Companies Act,2013, a member in relation to a company means_____ to the MOA of company. (10 Letters)
4	An Activity related to register of members. (7 Letters)

5	An Act of refusal of transfer/transmission of securities by a company is appealable before____. (4 Letters)
7	It is minimum number of members who must be personally present at the meeting for the meeting to be valid. (6 Letters)
9	In this process, shareholders of the private company purchase control of the public shell company and then merge it with the private company. (10 Letters)
14	Headquarters of the World Bank is located in____. (3 Letters)
15	Each in a series of rows or levels of a structure placed one above the other. (4 Letters)
17	This port is called 'Queen of Arabian Sea'. (5 Letters)
20	The state is known as state of Granary of India. (6 Letters)
25	It's an integrated web-based form recently launched by MCA as a part of Government's initiative of Ease Of Doing Business. (9 Letters).
26	Payment of wages to workmen during the lockdown period shall not be counted towards ____ expenditure under the Covid - 19 activity. (3 Letters)
VERTICAL (DOWN)	
1	Invitation to subscribe shares offered to public. (10 Letters)
2	A long-term security, yielding a fixed rate of interest, issued by a company and usually secured against assets. (9 Letters)
6	_____ is a brand name or service mark & used to identify & distinguish the goods/services. (9 Letters)
8	It is an involuntary act related to securities by operation of law. (12 Letters)
9	As per Regulation 36(1) of SEBI(LODR),2015 if a member requests, its hard copy should be sent to him. (12 Letters)
10	Is an individual who monitors the entire process of E-Voting. (11 Letters)
11	Disputes resolution process for direct tax announced in Union Budget 2020. (14 Letters)

12	An office appointed as per the Companies Act covering various states & union territories & it deals with administration of the Companies Act,1956, Companies Act, 2013, LLP Act,2008. (3 letters)
13	Debenture holders of a company are its _____. (9 Letters)
15	The price band in an IPO is mainly decided by _____. (9 Letters).
16	In view of COVID-19, SEBI has extended its approval for IPO & Right issues by ____ Months. (3 Letters)
19	Apex development bank of India for financing agricultural and rural sector is _____. (6 Letters)
18	It was formed on April 1, 1935 as a private entity, but is a government entity now. (3Letters)
21	Former agency set up by Central Government for revival of sick industries. (4 Letters)
22	A non-profit body, formed for community development at local/national/ global level. (3 Letters)
23	The Export Credit Guarantee Corporation (ECGC)of India Ltd is based in _____. (6 Letters)
24	The minimum interest rate of a bank below which it is not viable to lend, is known as _____. (8 Letters)

Note: Solutions to March and April volumes of Crossword will be published in May issue of e-Focus.

**LIST OF EXECUTIVE OFFICER/ IN-CHARGE
OF CHAPTERS OF WIRC**

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3	Bhayander	Ms. Krutika Kargutkar	022-28183888	krutika.kargutkar@icsi.edu
4	Bhopal	Ms. Amita Malviya	0755-2577139	amita.malviya@icsi.edu
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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 31.03.2020. 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>
- PCH for company secretary in employment is mandatory. Members in employment (i.e. members in whose name Form 32 has been filed to work as Company Secretary under the provisions of Sec. 383A of the Companies Act, 1956) shall be required to obtain 10 Programme Credit Hours in each year or 35 Programme Credit Hours in a block of three years.

Member's age	Below 60 years		Above 60 years but below 65 years	
Status	Employment	Practice	Employment	Practice
PCH in each year	10	15	5	8
PCH in block of 3 years	35	50	18	25
CoP / Employment taken during	Employment	Practice	Employment	Practice
1 April 2017 – 31 March 2018	20	30	10	15
1 April 2018 – 31 March 2019	10	15	5	8
1 April 2019 – 31 March 2020	0	0	0	0

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 till April 14, 2020 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)

SUB-COMMITTEES OF ICSI – WIRC FOR THE YEAR 2020*

Sl. No.	Name of Committee	Chairperson of committees	Members
1	Placement Committee	CS Pawan Chandak	CS Prasad Takalkar CS Mayank Bhargava CS Mehul Rajput CS Khushboo Gundesha CS Rahul Sahasrabuddhe, Ex-officio Member CS Rajesh Tarpara, Ex-officio member.
2	Public Relation Committee	CS Pawan Chandak	CS Sujay Joshi CS Amit Pasare CS Pramod Laddha CS Rahul Sahasrabuddhe, Ex-officio Member CS Rajesh Tarpara, Ex-officio member.

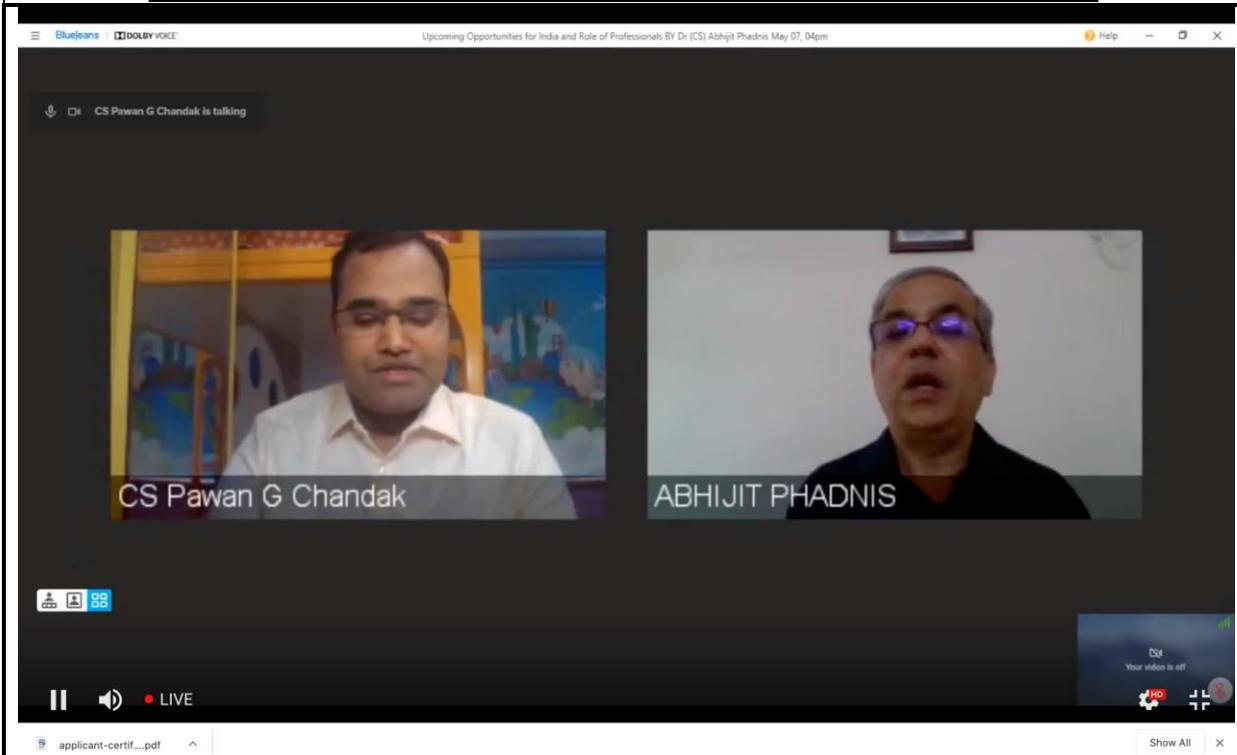
(*These committees were missed inadvertently in the earlier issues.)

Winners of WIRC's Regional Petition Drafting Competition are as follows:

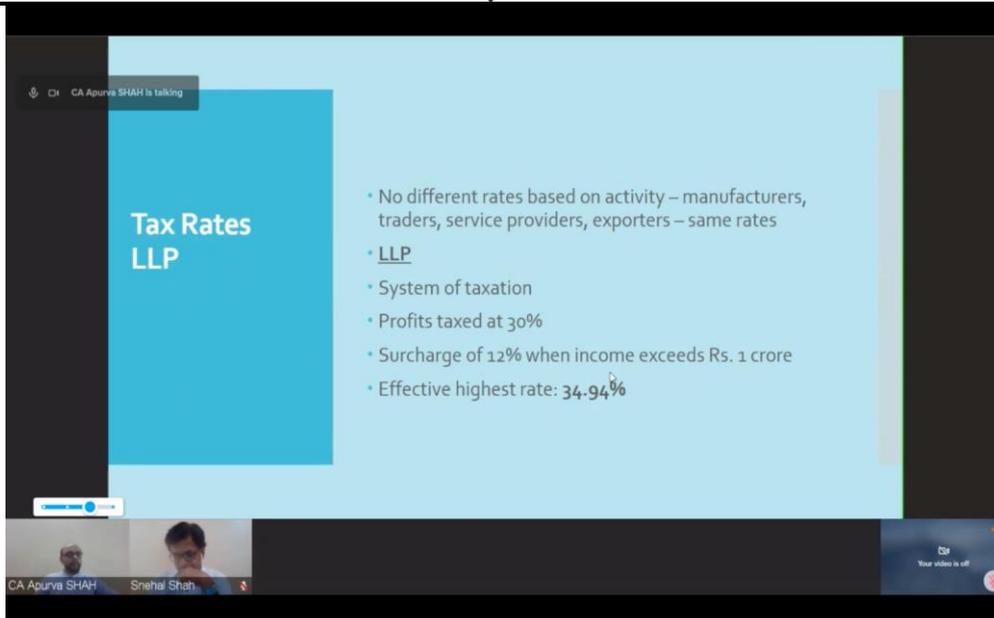
- **Winner** - CS Lakshminarayan Krishnamoorthy
- **Runner Up** - CS Shivram C S Ganesan
- **Second Runner Up** - CS Vandana Patel

Congratulations to all winners and special thanks to judges CS Prashant Thakre & Adv. (CS) Piyush Luktuke

PHOTO GALLERY
Glimpses of Various Webinars conducted by WIRC



CS Pawan Chandak, Vice Chairman, WIRC of ICSI moderating session on Upcoming Opportunities for India and Role of Professionals by Dr. (CS) Abhijit Phadnis during WIRC's 4 Day Lecture Series



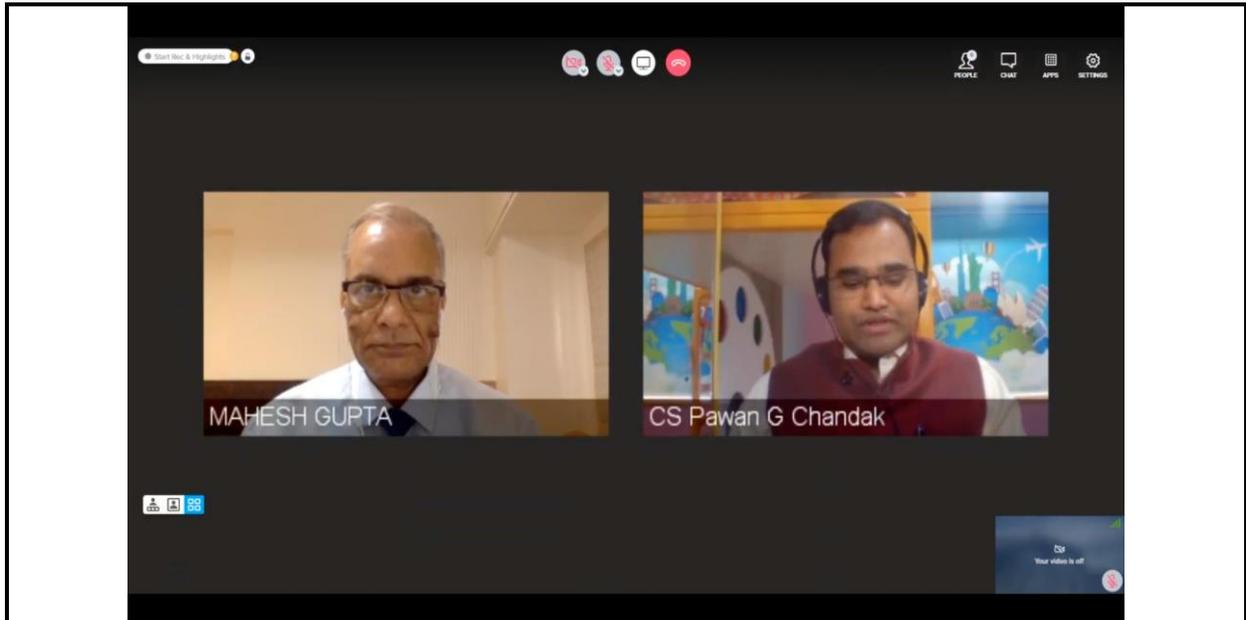
CS Snehal Shah, Treasurer, WIRC of ICSI, moderating session on Insight on Corporate Taxation by CA Apurva Shah at WIRC's 4 Day Lecture Series



CS Yogesh Chowdhary, Regional Council member, WIRC of ICSI, moderating session taken by CS Manoj Bandhia at WIRC's 4 Day Company Law Refresher Course



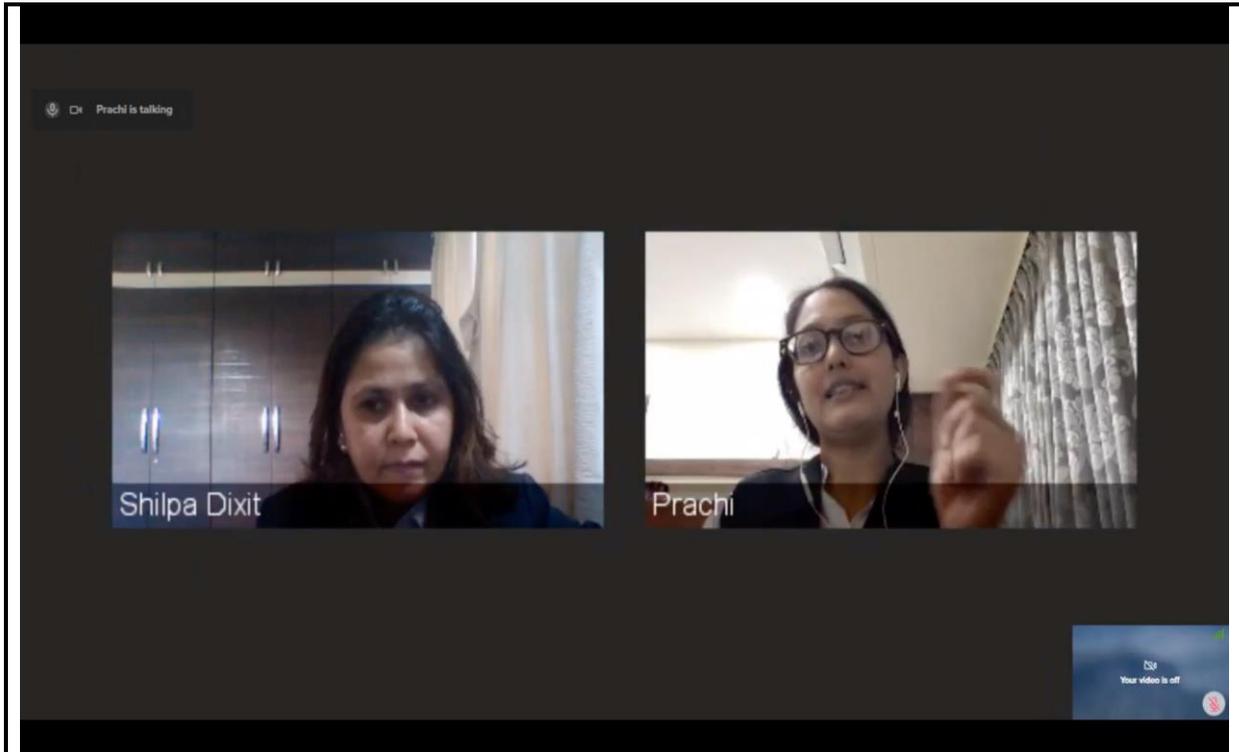
CS Ashish Karodia, Regional Council member, WIRC of ICSI, moderating session taken by Dr. (CS) D K Jain at WIRC's 4 Day Company Law Refresher Course



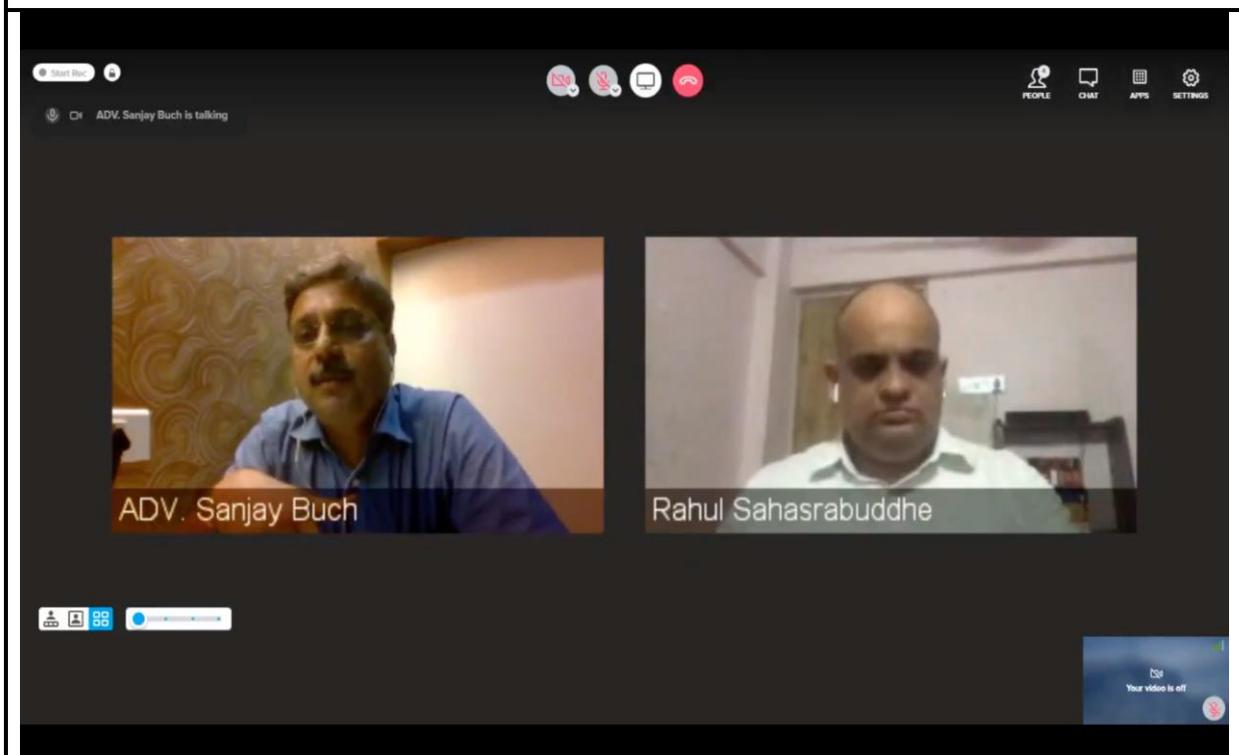
CS Pawan Chandak, Vice Chairman, WIRC of ICSI, moderating session taken by CS M C Gupta at WIRC's 4 Day Company Law Refresher Course



CS Hrishikesh Wagh, Regional Council member, WIRC of ICSI, moderating session taken by CS Sudhakar Saraswat at WIRC's 4 Day Company Law Refresher Course



CS Shilpa Dixit, Regional Council member, WIRC of ICSI, moderating session taken by Advt (CS) Prachi Wazalwar Manekar in lecture series "Mergers et al"



CS Rahul P. Sahastrabuddhe, Chairman, WIRC of ICSI, moderating session taken by Adv. Sanjay Buch in lecture series "Mergers et al"

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Rajesh Tarpara is talking

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CS Pawan G Chandak is talking

Rajesh Tarpara | CS Pawan G Chandak

LIVE

CA Nilesh Shah, MD Kotak AMC, CS Pawan Chandak- Vice Chairman WIRC and CS Rajesh Tarpara Secretary WIRC, at sessions on Investment Outlook on India and Important Aspects of Nidhi Companies at WIRC's 4 Day Lecture Series

**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!

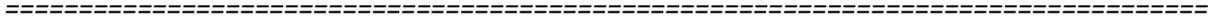
“Start writing, no matter what. The water does not flow until the faucet is turned on.” — Louis L’Amour

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 2500 to 4000 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.
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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. Sahasrabudhe
Chairman
ICSI-WIRC



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Signature of Author

Date:

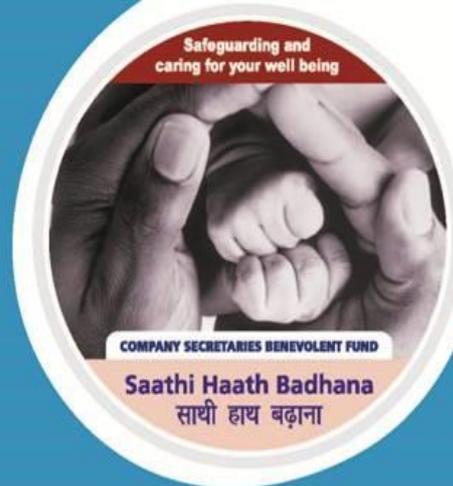
Place:

CSBF Appeal



**THE INSTITUTE OF
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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
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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.

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