

Management of Companies during the outbreak of COVID-19*

The World Health Organisation (WHO) on March 11, 2020 has formally declared the novel coronavirus (COVID-19) outbreak a global pandemic, which has till now led to the death of approximately more than 2 lakhs people and infected more than 25 lakhs of people globally. It has sent shock waves across global market and has forced unprecedented measures on the movement of people within and across the country.

In India only, approximately more than 25 thousand people are infected upto now and more than 700 have died. As vaccine is yet to be found, in order to curb the outbreak, government of many countries including India has announced complete lockdown.

Indian Prime Minister initially announced 21 days lock down from 24th March, 2020 till 14th April, 2020. Then it was further extended till 3rd May, 2020. The Government of India's directives of lockdown, imposition of travel ban, suspending flights, stopping trains, shutting factories and businesses, social distancing to avoid large public gatherings, asking companies to have their employees work from home have significant impact on the normal day to day management of the Companies. The rapid spread of Coronavirus outbreak has wrecked the market and disrupted demand-supply chain, forcing the companies to think hard how they can conduct their business uninterruptedly.

Even before the outbreak of COVID-19, the global economy including India was facing a slowdown. Moreover, the Indian economy was grappling with its own issues such as banking and financial services are facing massive problems with the collapse of IL&FS, DHFL and Yes Bank fiasco. Besides, this slowdown has also been witnessed in other sectors of economy such as auto industry, telecom, textile, mining, manufacturing, power industry etc. The outbreak of COVID-19 made the matters worse. This global shock comes at a particularly inopportune time for India, as the economy was already on a very concerning downward trajectory.

The credit rating agencies both global and domestic are unanimous that the Covid-19 pandemic will be an economic disaster for India. Fitch Ratings have slashed its earlier GDP growth forecast for India and now estimated it around 0.8% for the financial year 2020-21, while Standard & Poor and Moody's have projected India to grow at around 1.8% and 2.5%, respectively. Goldman Sachs has lowered its growth estimation to 1.6% for the financial year 2020-21 from 3.3% estimated earlier. The impact of this disaster will be far-fetched from spiking rise in unemployment rate, decrease in demand, fall of income of various sectors such as tourism, hospitality, IT, Aviation etc., leading to massive lay-off, pay cut and other consequences.

Amidst this grave situation companies are finding it very hard to run their business smoothly. Businessmen have to think of various alternatives to manage their companies in this critical condition where there is lack of man-power, resources, proper infrastructure etc. for carrying out conducive businesses.

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Various Challenges for the Management of Companies during Covid-19 outbreak

- 1) While many companies have implemented the policy of work from home for their employees during the lockdown period, but a lack of proper infrastructure poses many challenges. For instance, many employees do not have laptop or desktop, in many parts of India they don't have access to high-speed internet, power back-up etc.
- 2) Manufacturing industries, mining industries, textile industries, power generation companies are most hard hit where their units are completely closed, manpower is unavailable, transportation is disrupted, there is no or very less generation of revenue, but they have to pay wages to workers and salaries to the staff from their reserve.
- 3) Then another major challenge is conducting of various Meetings such as: Board Meetings, Annual General Meeting, Extra Ordinary General Meetings, Class Meetings etc. Meetings are necessary instrument of decision-making.

- (i) Annual General Meeting provides opportunities to the shareholders of the Companies to ask question from the Management, get their queries resolved and hear views of other members.

As the new financial year has already begun, many companies have concerns over their upcoming Annual General Meetings (AGM). Holding physical meeting with large gathering of shareholders will risk the spread of the disease.

However, Companies have to comply with the various provisions and time-limitations provided in the Companies Act, 2013, SEBI Act and other applicable Acts, rules and regulations. Companies Act, 2013 provides that a company shall conduct its AGM within a period of six months (nine months in case of first AGM) from the closure of the financial year and not more than fifteen months shall elapse between the date of one annual general meeting of a company and that of the next.

As per Regulation 44(5) of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, top 100 listed entities by market capitalization are required to hold Annual General Meeting, within a period of 5 months from the date of closing of the financial year.

- ii) Though the country is in lock-down mode, but companies still need to work. There are lots and lots of matters in the corporate world where board decisions are required. There are matters which mandatorily require board resolutions to be passed in a meeting of the board, and these matters may be quite frequent, for example, borrowing monies, granting of loans, investing of funds, issue of securities, etc. Additionally, there may be lots of other matters where approval of boards/ audit committee meetings or other committee meetings may be required.
- iii) Amid this grave situation, many companies are unable to hold Extra Ordinary General Meeting, hence, facing delay on transaction of urgent matters such as related party or inter-corporate transactions, where there is a requirement of shareholder's approval for passing resolutions. This delay in holding shareholder meetings can have a material impact on business and leading to non-compliance and inviting penalty from the regulators.

- 4) On one hand, the companies are unable to conduct necessary physical processes for book closures during the lockdown. They are also struggling to assess the financial impact of the disruptions caused by Covid-19. On other hand, the Statutory Auditors are facing difficulty to conduct audit of financial statements of Companies. Secretarial Auditors are facing difficulty in physically verifying the company's statutory compliance related documents in such extraordinary situations.
- 5) Heavy dependence of Companies on digital mode like video-conferencing, VPN solutions, cloud-enablement etc, for conducting of business is also posing cyber-security threats for the companies, leakage of price-sensitive information etc., when majority of staffs are working from home, may be, they are using unprotected personal networks, which opens up organisations to a completely different level of fraud and cybercrime risks.

Recently Ministry of Home Affairs have issued an advisory on the use of the video conferencing app-Zoom. It was said that the use of the platform is "not safe" regarding to its dubious privacy policy. Zoom has emerged as an one-stop solution for video meetings among users during the covid-19-induced lockdown globally. But the looming concern on Zoom is related to the security loopholes that have been unearthed in multitudes.

Hence, viewing such extra-ordinary circumstances, several relaxations have been given by various regulatory authorities of India such as Ministry of Corporate Affairs, Securities Exchange Board of India, Reserve Bank of India, SIDBI etc., for providing relief amidst this pandemic.

Relaxation given by Ministry of Corporate Affairs

Relaxations regarding Board Meetings

- (1) Many Companies are facing difficulties during this lock-down period in complying with the mandatory requirement of holding of Board Meetings by maintaining the stipulated time gap of 120 days between two consecutive meetings of the Board, as mentioned in Section 173 of the Companies Act, 2013.

Viewing such difficulties, MCA has extended the time gap of 120 days by a period of further 60 days till next two quarters i.e. till 30th September, 2020. Accordingly, as an one-time relaxation the gap between two consecutive meetings of the Board extended to 180 days till the next two quarters, instead of 120 days as required in the Companies Act, 2013. Consequently, this aims at reducing the compliance burden of the Companies.

- (2) Considering the need to take precautionary steps to overcome the outbreak of the coronavirus (COVID-19), the Ministry of Corporate Affairs has relaxed the requirement of holding Board meetings with physical presence of directors under Section 173 read with rule 4 of the Companies (Meetings of Board and its Powers) Rules, 2014 for approval of the restricted matters such as approval of the annual financial statements, board's report, approval of the prospectus, the Audit Committee Meetings for consideration of financial statement including consolidated financial statement if any, to be approved by the board under sub-section (1) of section 134 of the Act and approval of matters relating to amalgamation, merger, demerger, acquisition and takeover vide. Companies (Meetings of Board and its Powers) Amendment Rules, 2020, dated 19th March, 2020.

Companies now may hold such meetings for the period beginning from the commencement of the Companies (Meetings of Board and its Powers) Amendment Rules, 2020 i.e. 19th March, 2020 till 30th June, 2020 through Video Conferencing or other audio

visual means (OAVM) by duly ensuring compliance of rule 3 of the Companies (Meetings of Board and its Powers) Rules, 2014.

According to Rule 3 of the Companies (Meetings of Board and its Powers) Rules, 2014, the companies will have to ensure avoidance of failure of the video or audio-visual connection. The chairperson of the meeting and the company secretary (if any) has to take due and reasonable care to safeguard the integrity of the meeting via proper security and identification procedures. Companies need to ensure availability of proper video conferencing or other audio-visual equipment or facilities for providing transmission of the communications for effective participation of the directors and other authorised participants at the Board meeting. Proceedings at the board meeting will have to be recorded and minutes of the meeting needs to be prepared. Hence, Directors need not come to a common venue and can do the meetings from their home only.

Relaxation of holding Independent Directors Meeting

- 3) The Independent Directors of the company are required to hold at least one meeting in a financial year, without the attendance of non-independent directors and members of management. But due to Covid-19 crisis, MCA has relaxed the provision that if the Independent Directors of a company have not been able to hold such a meeting for the financial year 2019-20, the same shall not be viewed as violation. To co-ordinate among themselves the independent Directors, may share their views amongst themselves through telephone or e-mail or any other mode of communication, if they deem it to be necessary.

Relaxation on Extra-Ordinary General Meeting

- 4) The Ministry of Corporate Affairs vide its Circular No. 14/2020 dated 8th April, 2020 and Circular No. 17/2020 dated 13th April, 2020 has clarified that the companies are allowed to conduct unavoidable Extra Ordinary General Meeting (EGM) to transact business of urgent nature requiring approval of members (except items of ordinary business and items where any person has a right to be heard) through Video Conferencing (VC) or Other Audio Visual Means (OAVM) in prescribed manner on or before 30th June, 2020.

In light of the aforesaid, this notification is a welcome step as it enables companies (including those that are not required to provide for (e-voting facility)) to conduct EGMs by way of VC-OAVM for matters that are considered unavoidable, Hence, It helped the companies to conduct business as usual to an extent whilst ensuring that there is adherence to principles of corporate governance even during such challenging times.

Relaxation for holding Annual General Meeting

- 5) Amidst this health emergency and related social distancing norms and consequential restrictions linked thereto, many companies are facing difficulties in holding annual general meetings (AGMs) whose financial year has ended on 31st December, 2019 due to COVID-19.

On account of these difficulties, MCA vide. Circular dated 21st April, 2020 has clarified that for the companies whose financial year (other than first financial year) has ended on 31st December, 2019, can hold their AGM for such financial year within a period of nine months from the closure of the financial year (i.e. by 30th September, 2020), and

the same shall not be viewed as a violation. Thus, giving sufficient time to above mentioned companies to avoid non-compliance.

Additional Relaxations

- (i) The Companies (Auditor's Report) Order, 2020 shall be made applicable from the financial year 2020-2021, instead of being applicable from the financial year 2019-2020 as notified earlier. This will significantly ease the burden on companies & their auditors for the financial year 2019-20.
- (ii) MCA has announced that no additional fees shall be charged for late filing during a moratorium period from 01st April to 30th September 2020, in respect of any document, return, statement etc., required to be filed in the MCA-21 Registry, irrespective of its due date, which will not only reduce the compliance burden, including financial burden of companies/ LLPs at large, but also enable long-standing non-compliant companies/ LLPs to make a 'fresh start'.

In pursuance of the Government of India's efforts to provide relief to law abiding companies and Limited Liability Partnerships (LLPs) in the wake of COVID 19, the Ministry of Corporate Affairs, has introduced the "Companies Fresh Start Scheme, 2020" and revised the "LLP Settlement Scheme, 2020" which is already in vogue to provide a first of its kind opportunity to both companies and LLPs to make good any filing related defaults, irrespective of duration of default, and make a fresh start as a fully compliant entity. The Fresh Start scheme and modified LLP Settlement Scheme incentivize compliance and reduce compliance burden during the unprecedented public health situation caused by COVID-19. The USP of both the schemes is a one-time waiver of additional filing fees for delayed filings by the companies or LLPs with the Registrar of Companies during the period starting from 1st April, 2020 and ending on 30th September, 2020.

- (iii) MCA has clarified that amount spent for various activities related to COVID-19 are eligible for CSR activity under item no. (i) and (xii) of Schedule VII of Companies Act, 2013, relating to promotion of healthcare including preventive healthcare and sanitation and disaster management. Also, any contribution made to the Prime Minister's Citizen Assistance and Relief in Emergency Situations Fund (PM CARES Fund) shall qualify as CSR expenditure under the Companies Act 2013. The Fund has been set up by the Government of India to deal with any kind of emergency or distress situation such as that posed by COVID-19 pandemic. Hence, now companies can help the government during this tough time as well as can fulfil their statutory Corporate Social Responsibility obligations.
- (iv) MCA has temporarily relaxed the provision of Section 149 of the Companies Act, 2013 which provides that every company shall have at least one director who stays in India for a total period of not less than one hundred and eighty-two days during the financial year, Now any Non-compliance of minimum residency shall not be treated as violation for the financial year 2019-20.

Various other relaxations related to provisions of Companies Act, 2013 and the rules made thereunder also have been given by MCA. In the current lockdown scenario, the relaxations granted by MCA from a few of the compliance requirements will definitely ease the burden on the management of the companies and LLPs for few months.

Relaxations given by Securities and Exchange Board of India (SEBI)

SEBI has granted the following relaxations from compliance stipulations specified under the SEBI (Listing Obligations and Disclosure Requirements) ('LODR') Regulations, 2015 to listed entities:

Relaxation given to Board / Audit Committee meetings

- 1) As per Reg. 17(2) and 18(2)(a) of the SEBI(LODR) Regulations, 2015, it is mandated that the board of directors and the audit committee of listed entity shall meet at least four times a year with a maximum time gap of one hundred and twenty days between any two meetings.
SEBI vide circular, dated 19th March,2020 has exempted the board of directors and Audit Committee of the listed entity from observing the maximum stipulated time gap of 120 days between two meetings for the meetings held or proposed to be held between the period December 1, 2019 and June 30, 2020. However, the board of directors / Audit Committee shall ensure that they meet at least four times a year, as stipulated under regulations 17(2) and 18(2)(a) of the SEBI(LODR) Regulations, 2015.
- 2) Regulation 29(2) of the SEBI(LODR) Regulations, 2015 specifies that stock exchanges need to be provided prior intimation about meetings of the board (excluding the date of the intimation and date of the meeting) of at least 5 days before the meeting if financial results are to be considered and 2 working days in other cases. It has been decided by SEBI that the above requirement under Regulation 29 (2) of prior intimation of 5 days / 2 working days shall be reduced to 2 days for board meetings held till July 31, 2020.

Relaxation for conduct of Committee Meetings

- 3) As per Regulation 19(3A), 20(3A) and 21(3A) of the SEBI (LODR) Regulation, 2015, the Nomination and Remuneration Committee, the Stakeholder Relationship Committee, the Risk Management Committee which is required to meet at least once in a year whose due date is March 31, 2020. SEBI has extended this due date by 3 months till 30th June, 2020. By this step the compliance burden of holding the committee meetings has been eased for few months during this critical time.

Relaxation on conduct of Annual General Meetings

- 4) SEBI in its circular dated March 26, 2020 have already given 1 month relaxation to top 100 listed entities by market capitalization for financial year 2019-20 who are required to hold AGM within 5 months from the date of closing of the financial year in compliance to Regulation 44(5) of the SEBI (LODR) Regulations, 2015, now such companies can hold their Annual General meeting till September 30, 2020 instead of August 31, 2020. The above Relaxation is for listed entities, whose financial year ended on 31st March, 2020.

Subsequently, MCA vide Circular No.18/2020 dated April 21, 2020, has given relaxation to those Companies whose financial year (other than the first financial year) has ended on December 31, 2019, they can hold their AGM for such financial year within a period of nine months from the closure of the financial year (i.e., by September 30, 2020) and the same will not be treated as violation. Now, SEBI in order to streamline gave the same benefit to the top 100 listed entities by market capitalization whose financial year ended on December 31, 2019 vide circular dated April, 23, 2020.

Accordingly, regulation 44(5) of the SEBI (LODR) Regulations, 2015 is relaxed whereby the top 100 listed entities by market capitalization whose financial year ended on December 31, 2019 may hold their AGM within a period of nine months from the closure of the financial

year (i.e., by September 30, 2020). Thus, granted more time to listed entities for holding annual general during the pandemic.

Additional Relaxations

- i) SEBI vide circular dated 17th April, 2020 clarified that authentication / certification of any filing / submission made to stock exchanges under SEBI (LODR) Regulations, 2015 may be done using digital signature certifications until June 30, 2020.
- ii) Further, it has been brought to the notice of the SEBI, that some newspapers are not bringing their print versions for a limited period while some newspapers that are still printing are not accepting a e-copy of the information to be published which acts as a challenge in ensuring compliance with Regulation 47 of the SEBI (LODR) Regulations, 2015 which requires publication of information such as notice of the board meeting, financial results etc in the newspaper. So, it has been decided by SEBI to exempt publication of advertisements in newspapers as required under regulation 47 for all events scheduled till May 15, 2020
- iii) SEBI has also relaxed the deadline for submitting Corporate Governance reports by a month and quarterly shareholding patterns by three weeks (approx). The submission of Corporate Governance report is required to be made within 15 days from end of the quarter, thus, for quarter ending 31st March, 2020 due date is by 15th April, 2020 but now companies can submit them by 15th May, 2020. The shareholding pattern is required to be filed within 21 days from the end of the quarter. So, the due date for submission of shareholding pattern for quarter ending 31st March, 2020 is by 21st April, 2020, but now companies can submit it by 15th May, 2020.
- iv) Listed entities which had 45 days from the quarter ending 31st March, 2020 to file their quarterly financial results, will now get an extra 45 days. Also, annual financial results, which needed to be filed within 60 days from the financial year ending 31st March, 2020 have now been extended by a month. In effect, the deadline to file both has been extended till 30th June, 2020.

Besides these measures, other relaxations also has been given such as compliance certificate on share transfer facility, statement of investor complaints, secretarial compliance report etc., for listed entities and other market intermediaries as part of efforts to ease their compliance burden. These relaxations are welcome relief for corporate India. As many companies are doing work-from-home and this extension will be helpful for them to focus on the current business exigencies.

Relaxation given by Reserve Bank of India (RBI)

A slew of measures have been announced by the RBI to mitigate the burden of debt servicing brought about by disruptions on account of COVID-19 pandemic and to ensure the continuity of viable businesses.

- 1) In respect of all term loans (including agricultural term loans, retail and crop loans), all commercial banks (including regional rural banks, small finance banks and local area banks), co-operative banks, all-India Financial Institutions, and NBFCs (including housing finance companies) (“lending institutions”) are permitted to grant a moratorium of three months on payment of all instalments falling due between March 1, 2020 and May 31, 2020. The repayment schedule for such loans as also the residual tenor will be shifted across the board by three months after the moratorium period. Interest shall continue to accrue on the outstanding portion of the term loans during the moratorium period.

For the next three months no EMI would be deducted from the account of anyone who has a loan outstanding. And all this without any hit on credit score. EMIs will resume after the moratorium period gets over. This is going to be a huge relief for all EMI payers, especially for those — such as the self-employed — whose income had become uncertain in the wake of the lockdown.

- 2) In respect of working capital facilities sanctioned in the form of cash credit/overdraft, lending institutions are permitted to defer the recovery of interest applied in respect of all such facilities during the period from March 1, 2020 upto May 31, 2020 (“deferment”). The accumulated accrued interest shall be recovered immediately after the completion of this period. This would ease the already burdened companies from such payment of interest for the time being, helping them to focus on their business.
- 3) In respect of working capital facilities sanctioned in the form of cash credit/overdraft to borrowers facing stress on account of the economic fallout of the pandemic, lending institutions may recalculate the ‘drawing power’ by reducing the margins and/or by reassessing the working capital cycle. This relief shall be available in respect of all such changes effected up to May 31, 2020 and shall be contingent on the lending institutions satisfying themselves that the same is necessitated on account of the economic fallout from COVID-19.
- 4) Any delay in payment leads to default and gets reported to Credit Bureaus. For business loans of Rs. 5 Crores and above, the banks report the overdue position to RBI also through CRILC. As a result of the relief package by RBI, the overdue payments post 1st March 2020 will not be reported to Credit Bureaus/ CRILC for three months. No penal interest or charges will be payable to the banks. Similarly, SEBI has allowed that Credit Rating Agencies (CRAs) may not consider the delay as default by listed companies, if the same is owing to lockdown conditions arising due to COVID-19.
- 5) In view of the disruption caused by the pandemic, the time period for realisation and repatriation of export proceeds for exports made up to or on July 31, 2020, has been extended by RBI to 15 months from the date of export.

Presently value of the goods or software exports made by the exporters is required to be realized fully and repatriated to the country within a period of 9 months from the date of exports. This measure will enable the exporters to realise their receipts, especially from COVID-19 affected countries within the extended period and also provide greater flexibility to the exporters to negotiate future export contracts with buyers abroad.

RBI has also announced a sizeable reduction in the policy repo rate/ reverse repo rate and maintaining accommodative stance as long as necessary, while ensuring inflation remains within target.

Hence, besides these relaxations, other relief has also been provided by RBI to ease the burdened economy. The policy measures taken by the RBI will sizeably expand liquidity in the system, which will ensure that financial markets and institutions are able to function normally in the face of COVID-19 related dislocations. This will also reinforce monetary transmission so that bank credit flows on easier terms are sustained to all those who have been affected.

Small Industries Development Bank of India (SIDBI) recognizes the operational and financial challenges being faced by start-ups and has been making efforts to provide financial assistance and stability to such start-ups through schemes like COVID-19 Start-up Assistance Scheme ('CSAS'). The objective of this scheme is to provide quick working capital in the next 45 to 90 days after screening the application for the start-ups who are facing financial challenges.

Conclusion

Besides, these measures other regulators such as Ministry of Finance, Ministry of Commerce and Industry, Insolvency and Bankruptcy Board of India, Central Board of Direct Taxes, Central Board of Indirect Taxes and Customs etc., have given various relaxations to the Companies in India. These relaxations have helped them to stand and operate in such critical scenarios without worrying about the compliances, when the stock market is in frenzy state and the companies are finding it hard to keep their business stable and earn income.

Though various measures have been announced by various regulators in order to join hands with government efforts to rescue a slowing economy that has now got caught in coronavirus whirlwind, yet more relaxations are need of the hour in dealing with this COVID-19 outbreak in accordance with the current situation.
