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**Covid-19: Potential Impact and Revamping of the Policy Structure**

Jayant Saxena

## ABSTRACT

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The purpose of the below study is to capture the idea by elucidating the ramifications which have occurred due to the unprecedented crisis of the pandemic (COVID-19). The Government has successfully managed to alter the legislations, to attenuate the losses which have shaken up the backbones of many in respect to their occupation. Moreover, the study holds the audience with the efforts undertaken by the government in the context of safeguarding the interests at a larger scale. On the contrary, contraction in the growth of the Indian economy is not an easy challenge to be dealt with, which, however, is quite evident from the measures initiated by the government, where businesses and enterprises seem to somehow manage to keep their métier steady. The analysis summarizes major steps opted by The Security and Exchange Board of India (SEBI) providing adequate relaxations for the entities to function at a steady pace, along with which, a brief scope of clauses which can be seen triggering a lot amidst this pandemic i.e. Force majeure and Material Adverse Change (MAC), is too addressed under this study. Furthermore, amendments by Insolvency and Bankruptcy Board of India (IBBI) into the Insolvency and Bankruptcy Code (IBC) and by Ministry of Corporate Affairs (MCA) into Companies (Share Capital and Debenture Amendment) Rules, 2020, are covered along with the above analysis. As time passes by, the re-opening of the market is a necessary task to enforce for the revival of an economy and with that, managing and administering the impact of COVID-19 has to move on a parallel path. There is nothing more paramount than tackling unfavorable prevailing current economic conditions of the market which is consistently leaving the unwanted long-term impact on society.

**KEYWORDS:** COVID-19, SEBI, Companies, IBBI, IBC, force majeure, MAC, pandemic.

## INTRODUCTION

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This year will be remembered as one of the turbulent years of the past few decades. Pandemic like COVID-19 created a turmoil disrupting the operation of various companies, disallowing their engagement of doing businesses in a competitive market. The research summarizes the substantial

efforts opted by several governing bodies in the wake of COVID-19 and briefly addresses the impact and restructuring of laws/by-laws/regulations and how such a challenge has prepared us to deal with a similar crisis which may create unnecessary obstacles. Not only major but minor changes including day to day activities of many entities have been brought down to minimal operations. The Government in an announcement on May 2020, provided an economic relief package of US\$260 Billion to provide assistance to the sectors which suffered a lot or were predicted to suffer due to the lockdown. Even after such a scenario many companies did not halt their work and went on to raise funds and drew hefty investments from the offshore entities and kept themselves engaged in the market. The Telecom sector is one of the sectors which encountered serious demand and as per Credit Rating Information Services of India Limited (CRISIL), wired broadband data usage surged 25-30 per cent since the lockdown began<sup>1</sup> (Ananda, 2020). Numerous guidelines have been issued to control such an outcome and to mitigate the losses which are currently being endured by the companies, shareholders, investors, etc. Fast Moving Consumer Goods (FMCG) companies' sales via e-commerce business have also seen upward movement during the lockdown<sup>2</sup> (Tandon, 2020). Just at the initial stages of the lockdown, many pharmaceutical companies grew at a steady rate wherein Mankind Pharma grew at 13.8% and Intas Pharmaceuticals Ltd. grew at 13.5%<sup>3</sup> (Mehta, 2020). After believing hydroxychloroquine as a drug effective in treating coronavirus, many pharma companies such as Sun Pharma, Cipla, Aurobindo Pharma were projected to grow at a significant rate, foreign brokerage firm CLSA said<sup>4</sup> (Jain, 2020). International Monetary Fund (IMF) projected a 6.4% decline in India's GDP which after revision came out to be 4.5% contraction in its latest World Economic Outlook update for FY 2021<sup>5</sup> (Singh, 2020).

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<sup>1</sup> Jonathan Ananda, Although Demand Has Risen During Lockdown, Telecom Sector's Troubles Are Only Set To Linger, The New Indian Express, (July 26, 2020, 5:34 pm), <https://www.newindianexpress.com/business/2020/apr/28/although-demand-has-risen-during-lockdown-telecom-sectors-troubles-are-only-set-to-linger-2136268.html>.

<sup>2</sup> Suneera Tandon, Lockdown: FMCG companies see surge in online business, Live mint, (July 26, 2020, 10:38 pm), <https://www.livemint.com/industry/retail/lockdown-fmcg-companies-see-surge-in-online-business-11589367472438.html>.

<sup>3</sup> Darshan Mehta, India's pharma sales growth slows in lockdown-Marred March; Bloomberg Quint; (July 26, 2020, 10:42 pm), <https://www.bloombergquint.com/business/indias-pharma-sales-growth-slows-in-lockdown-marred-march>.

<sup>4</sup> Surbhi Jain, Sun Pharma, Aurobindo Pharma among top stock picks from Pharms sector: CLSA sees gain up to 30%, Financial Express, (July 26, 2020, 10:45 pm), <https://www.financialexpress.com/market/sun-pharma-aurobindo-pharma-cipla-cadila-healthcare-top-stock-picks-from-pharma-sector-clsa-sees-gain-up-to-30pc-lupin-abbott-india-hydroxychloroquine/1952325/>.

<sup>5</sup> Ritu Singh, IMF hands India steepest cut, sees GDP contracting by 4.5% in FY 21, CNBC TV18, (July 26, 2020, 10:47 pm), <https://www.cnbc18.com/economy/imf-hands-india-steepest-cut-sees-gdp-contracting-by-45-in-fy21-6196101.htm>.



## **CAPITAL MARKET – THE SECURITIES AND EXCHANGE BOARD OF INDIA (SEBI) RELAXATIONS**

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SEBI via many circulars over the last several months has relaxed a number of regulations applicable to companies, rights issues, relaxed several procedural issues pertaining to takeover and buyback code, initial public offerings (IPO) guidelines, etc. Circular dated May 6, 2020, by SEBI, have granted relaxations from certain regulations of (Issue of Capital and Disclosure Requirements) Regulations, 2018 (“**ICDR Regulations**”), pertaining to rights issue which had an opening up to July 31, 2020. As per Regulation 77(2) of ICDR, abridged letter of offer, the application form shall be submitted through post/courier service/electronic transmission to all shareholders and failure to do so shall not be considered as non-compliance whereas vital steps shall be considered by the issuer to provide all the information in respect to the issue via any digital advertisements. Apart from Application Supported by Blocked Amount (**ASBA**) facility, the issuer along with the lead manager and registrar shall provide an optional mechanism (non-cash mode only) to accept the applications of the shareholders. Inspection of offer documents shall take place electronically and digital signatures shall be used in authentication/certification and undertakings<sup>6</sup> (Anon., 2020). Reliance Industries Limited (**RIL**) recently raised funds worth US\$7.07 billion, through rights issue during the period of lockdown.

SEBI has also amended the Substantial Acquisition of Shares and Takeovers Regulations, 2011 (“**SAST Regulation**”) easing the norms for promoters to acquire fresh capital in the form of the preferential issue instead of acquiring from secondary market. Promoters now can acquire 10% of shares without triggering the open offer which earlier promoters were only allowed to acquire 5% referred to as creeping acquisition under SAST regulation without triggering an open offer. As far as norms for Qualified Institutional Buyers (**QIB**) are concerned, SEBI has relaxed the obligatory cooling off period from 6 months between two consecutive QIPs to two weeks<sup>7</sup> (Zachariah, 2020). As per data from the Prime Database, as of June 16, 2020, US\$1.1 billion, has been raised by

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<sup>6</sup> Relaxations relating to procedural matters- Issues and Listing, Securities and Exchange Board of India, (July 26, 2020, 10:49 pm), [https://www.sebi.gov.in/legal/circulars/may-2020/relaxations-relating-to-procedural-matters-issues-and-listing\\_46652.html](https://www.sebi.gov.in/legal/circulars/may-2020/relaxations-relating-to-procedural-matters-issues-and-listing_46652.html).

<sup>7</sup> Reena Zachariah, SEBI tweaks in takeover norms to help promoters raised holding, Economic Times, (July 26, 2020, 10:50 pm), <https://economictimes.indiatimes.com/markets/stocks/news/sebi-tweaks-in-takeover-rules-make-it-easier-for-promoters-to-raise>.

companies through QIP. During the last financial year, US\$6.83 billion were raised by companies via this route<sup>8</sup> (Arora, 2020).

The market regulator has also eased the norms for stressed firms (allotment not for promoters group) with certain conditions to comply with in respect to allowing the preferential offer of shares at the average price of the last two weeks from the relevant date which earlier as per regulation 164 of ICDR cannot be less than the average of the weekly high and low of twenty-six weeks. SEBI even elaborated on the meaning of “stressed firms”, as, any entity who has committed a default on payments on loans/principal amount acquired from banks/financial institutions<sup>9</sup> (Anon., 2020). For a fact, Jet Airways’ resolution partly dropped because of a higher asking price given the formula.

Regulation 155 of (Issue of Capital and Disclosure Requirements) Regulation, 2018 (**“ICDR Regulations”**) lays down the conditions when dealing with the Fast Track Route in raising funds which can be a feasible option for a company who is considering a Further Public Offer (**FPO**). As the name suggests, Fast Track FPO allows companies to raise funds at a significantly shorter period by exempting few conditions from the regulation such as preparation and filing of a draft offer document and SEBI skipping the step of providing the feedback on such. The reduction in the time duration can be anticipated anywhere from eight months to three months. As per circular dated June 9, 2020, SEBI by reducing the eligibility criteria to raise funds through this route, reduced the threshold of the average market capitalization of public shareholding to 500 Crores (earlier 1000 crores) and assuming smaller companies having lesser shareholding will automatically allow them to raise funds through a Fast Track route. Under Regulation 226 of ICDR (Fast Track Issue) there shall be no pending show-cause notices (SCN)/prosecution proceedings against the issuer, promoters or whole-time directors, keeping of which in mind, in the circular, the issuer shall be subject to necessary disclosure of such actions in the offer document along with the potential adverse impact on the issuer<sup>10</sup> (Anon., 2020).

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<sup>8</sup> Mannu Arora, Will SEBI’s relaxation in QIP norms help CFOs raise more capital?, Economic Times, (July 26, 2020, 10:55 pm),

<https://cfo.economictimes.indiatimes.com/news/will-sebis-relaxation-in-qip-norms-help-cfos-raise-more-capital/76438559>.

<sup>9</sup> SEBI eases preferential issue norms for stressed firms, The Economic Times, (July 26, 2020, 10:59 pm)

<https://economictimes.indiatimes.com/markets/stocks/news/sebi-eases-preferential-issue-norms-for-stressed-firms/articleshow/76526716.cms?from=mdr#:~:text=NEW%20DELHI%3A%20In%20a%20bid,allottees%20from%20open%20offer%20obligations.>

<sup>10</sup> Relaxations from certain provisions of the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 in respect of Further Public Offer, Securities and Exchange Board of India, (July 26, 2020, 11:00 pm),

## MISCELLANEOUS RELAXATIONS

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Other relaxations from compliances in respect to regulations stipulated under Listing Obligation and Disclosure Requirements (“**LODR Regulations**”) are mentioned below<sup>11</sup> (Anon., 2020):

- Extension of 1 month in the filing of compliance certificate on share transfer facility – Regulation 7(3)
- Extension of 3 weeks in filing a statement by issuer relating to the Investor complaints – Regulation 13(3)
- Extension of 1 month in the filing of a mandatory Secretarial Audit Report – Regulation 24A
- Extension of 1 month in submitting the quarterly compliance report on corporate governance to recognized stock exchange – Regulation 27(2)
- Extension of 3 weeks in submitting shareholding pattern separately for each class of securities and a statement presenting holding of securities – Regulation 31
- Extension of 45 days in filing of quarterly financial statement and of 1 month when filing annual financial statement.

A relaxation of 60 days in filing of audited financials is provided to prospective issuers of debt securities such as Non-convertible Debentures (**NCDs**), Commercial Papers (**CPs**) and Non-convertible redeemable preference shares (**NCRPS**) which in ordinary times should not be 6 months older from the date of filing of an offer document. As per follow up circular by SEBI, an extension 45 to 60 days were provided later on<sup>12</sup> (Anon., 2020).

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[https://www.sebi.gov.in/legal/circulars/jun-2020/relaxations-from-certain-provisions-of-the-sebi-issue-of-capital-and-disclosure-requirements-regulations-2018-in-respect-of-further-public-offer\\_46791.html](https://www.sebi.gov.in/legal/circulars/jun-2020/relaxations-from-certain-provisions-of-the-sebi-issue-of-capital-and-disclosure-requirements-regulations-2018-in-respect-of-further-public-offer_46791.html)

<sup>11</sup> Relaxation from compliance with certain provisions of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 due to the COVID-19 virus pandemic, Securities and Exchange Board of India, (July 26, 2020, 11:01 pm),

[https://www.sebi.gov.in/legal/circulars/mar-2020/relaxation-from-compliance-with-certain-provisions-of-the-sebi-listing-obligations-and-disclosure-requirements-regulations-2015-due-to-the-covid-19-virus-pandemic\\_46360.html](https://www.sebi.gov.in/legal/circulars/mar-2020/relaxation-from-compliance-with-certain-provisions-of-the-sebi-listing-obligations-and-disclosure-requirements-regulations-2015-due-to-the-covid-19-virus-pandemic_46360.html)

<sup>12</sup> Relaxation from compliance with certain provisions of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 and certain SEBI Circulars due to the COVID -19 virus pandemic – continuation, Securities and Exchange Board of India, (July 26, 2020, 11:21 pm),

[https://www.sebi.gov.in/legal/circulars/mar-2020/relaxation-from-compliance-with-certain-provisions-of-the-sebi-listing-obligations-and-disclosure-requirements-regulations-2015-and-certain-sebi-circulars-due-to-the-covid-19-virus-pandemic-cont-\\_46395.html](https://www.sebi.gov.in/legal/circulars/mar-2020/relaxation-from-compliance-with-certain-provisions-of-the-sebi-listing-obligations-and-disclosure-requirements-regulations-2015-and-certain-sebi-circulars-due-to-the-covid-19-virus-pandemic-cont-_46395.html)

Apart from the above-mentioned relaxations by SEBI, the functioning of courts has also reduced to minimal. Several courts have started to consider urgent proceedings, through e-courts video conferencing but things are far away from operating standard procedure.

## **SCOPE OF FORCE MAJEURE AND MATERIAL ADVERSE CHANGE ("MAC") CLAUSES**

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A name has recently been included to the list of top 10 richest people, with a net worth of US\$64.5 billion, according to Bloomberg Billionaires Index. Even after the catastrophic impact of COVID-19 on the economy of India, Mr. Ambani continued to pursue his dream of making his conglomerate a net-debt free company before the original schedule of March 2021. Reliance Industries Limited, raised over US\$22.51 billion (Rs 168,818 Crore) in a time span of just 58 days of which US\$15.43 billion (Rs 115,693 crore) were raised from global investors such as Facebook, Vista Equity Partners, Silver Lake, General Atlantic et cetera and remaining US\$7.08 billion (Rs 53,124 crore) through a rights issue which was subscribed 1.59 times making the largest issue ever in the world<sup>13</sup> (Singh, 2020).

Fulfilling contractual obligations under these circumstances could be a head-scratching thing for the parties associated with commercial contracts. Under an unprecedented situation like these, clauses such as "*material adverse change (MAC)*" and "*force majeure*" up to some extent can help in mitigating the losses which are expected to create an immense impact on the parties of the M&A transactions and financial contracts. Let us try to understand this!

Material Adverse Change (**MAC**), also known as Material Adverse Event (**MAE**), the clause allows parties to terminate or retract a contract between the period of signing of the contract and closure of a transaction, only on the occurrence of any event that significantly affects the effectiveness of the transaction. This particular provision shall be used to assign liability between the parties. However, the liability is upon the buyer to prove the occurrence of such event (here COVID-19) which has affected the transaction, as the scope for buyer widens and for the seller, it narrows down. Furthermore, Regulation 23(1)(c) of SEBI (Substantial Acquisition of Shares and

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<sup>13</sup> Sundeep Singh, "Reliance in golden decade" : Mukesh Ambani's group becomes net debt – Free, NDTV Profit, Securities and Exchange Board of India, (July 26, 2020, 11:03 pm), <https://www.ndtv.com/business/mukesh-ambani-announces-reliance-industries-now-debt-free-fulfilled-promise-to-shareholders-much-before-schedule-2248710>.

Takeovers) Regulations, states, *an open offer can be withdrawn as per the conditions, if stipulated in the contract, that the event is beyond the reasonable control of the acquirer, then such agreement is reinstated or revoked, subject to conditions clearly stated in a comprehensive public statement and the letter of offer*". Besides that, section 56 of the Indian Contract Act, 1872, states that any act or event which is beyond the control of the promisor occurred, after the contract is signed, such contract will be declared void and will fall under the purview of Doctrine of Frustration.

The process of invoking this clause (MAC) initiates by serving a notice to the seller/target before opting for further actions. On the objection of the target company, the burden lies over the Courts to determine the material adverse impact on the transaction occurred due to this pandemic, COVID-19. Over the last few weeks, numerous companies – mainly purchasers have exercised the MAC provision of a contract. Multiple of them have also participated in the IBC proceedings. Recently, the Ahmedabad bench of the National Company Law Tribunal (**NCLT**) accepted the resolution plan for Digjam Ltd. (Textile Co.) after lenders decided to modify the payment schedule due to COVID-19. Citing the instability in the aviation sector, Adani Group also requested more time in acquiring three airports of Lucknow, Mangalore, and Ahmedabad<sup>14</sup> (Mascarenhas, 2020).

In a popular case of *IBP v Tyson*, a merger agreement between two was concluded in which Tyson by invoking the MAC clause dissolved the merger in March 2001, relying on an argument that, "IBP had a significant impact whose projected profits of the first quarter of 2001 were fallen by 36% than those for the first quarter of 2000, whilst blaming the adverse weather during the winter of 2000-01"<sup>15</sup> (Anon., 2002), after which, the lawsuit was presented before the Delaware Court of Chancery, where court by pointing out the wrongful method of terminating the merger agreement, held that there had been no substantial adverse change. By the end of two weeks from the judgment, Tyson acquired IBP worth about US\$2.7 billion<sup>16</sup>.

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<sup>14</sup> Rajesh Mascarenhas, Companies invoking 'MAC clause to re-negotiate or exit deals, The Economic Times, (July 26, 2020, 11:01 pm), <https://economictimes.indiatimes.com/markets/stocks/news/companies-invoking-mac-clause-to-renegotiate-or-exit-deals/articleshow/76456375.cms?from=mdr>.

<sup>15</sup> Peter Ingerman, Training session : Material Adverse Change Clauses, Project Finance, (July 26, 2020, 11:01 pm), <https://www.projectfinance.law/publications/training-session-material-adverse-change-clauses#:~:text=a%20material%20adverse%20change%20—%20or,the%20condition%20of%20the%20target.&text=tyson%20foods%20canceled%20the%20contract,part%20on%20a%20mac%20clause>.

<sup>16</sup> Wachtell, Lipton, Rosen & Katz, *IBP, Inc. v. Tyson Foods*, Tyson Foods (Tyson), the nation's largest chicken processor, broke off its agreement to acquire IBP, the nation's largest meatpacking firm, and IBP subsequently filed a breach of contract suit. <https://www.cornerstone.com/publications/case-studies/ibp-v-tyson-foods>

While we are on the contract termination tab, nowadays, another clause that could possibly be invoked by the parties a lot is of “*force majeure*” (FM). The FM clauses shall include specific conditions or incidents stipulated in a contract establishing a force majeure case. This clause may be triggered at any time during the period of force majeure whereas MAC clauses can only be invoked between the period of signing and closure of the transaction. On February 19, 2020, Finance Ministry issued an office memorandum (OM) officially determining COVID-19 a natural disaster and hence a force majeure even before the declaration by World Health Organization (WHO) on March 12, 2020<sup>17</sup> (Correspondent, 2020).

A state of uncertainty still occurs among the people of India with respect to the right to demand waiver or any sort of relief from rent because it has been burdensome for some to continue to bear the problems arising out of their occupation.

Firstly, let us try to understand a few provisions stipulated under the Indian laws. The applicability of Force Majeure clause can be determined under section 32 and section 56 of the Indian Contract Act, 1872, whereas, former talks about the proceeding of the terms from the contract in the light of uncertain future and latter discusses the impossibility of an act or Doctrine of Frustration. In the case of *Energy Watchdog v. CERC & Ors.*<sup>18</sup> (Anon., 2017), the Supreme Court held, that if the contracts specifically contain the clause of force majeure, the tenant has the right to claim the waiver or suspension of the rent and will fall under section 32, whereas, Supreme Court in the case of *Raja Dhruv Dev Chand v. Raja Harmohinder Singh & Anr.*<sup>19</sup> (Anon., 1968), held that section 56 will not be applicable to the lease agreements by relying on the differentiation between the ‘completed conveyance’ and ‘executory contract’. However, in the current case of *Ramanand & Ors. v. Dr. Girish Soni & Anr.*<sup>20</sup> (Anon., 2017), amidst pandemic, High Court of Delhi observed that it is

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<sup>17</sup> Special Correspondent, COVID-19 a ‘Force Majeure’ situation, says Finance Minister, (July 26, 2020, 11:11 pm), <https://www.thehindu.com/business/industry/covid-19-a-force-majeure-situation-says-finance-ministry/article30863747.ece>.

<sup>18</sup> *Energy Watchdog v CERC & Ors.*, (2017) 14 SCC 80 (India).  
<https://indiankanoon.org/doc/29719380/>.

<sup>19</sup> <https://indiankanoon.org/doc/1455539/>

*Raja Dhruv Dev Chand v Raja Harmohinder Singh & Anr.*, 1968 AIR 1024, (India)

<sup>20</sup> <https://indiankanoon.org/doc/130579261/#:~:text=to%20fully%20compensate,rev.,property%20to%20a%20third%20party.&text=in%20any%20case%2c%20the%20compensation,execution%20of%20the%20eviction%20decree.>

*Ramanand & Ors. v Dr. Girish Soni & Anr.*, (RC. Rev. 447/2017), (India)

neither section 32 nor 56 but section 108 (B)(e) of Transfer of Property Act, **(TPA)** 1882, which is to be considered in a present matter when speaking of suspension or waiving off of a rent. Section 108(B)(e) of TPA, classifies the event of force majeure as fire, tempest or flood or violence of an army or of a mob, or other irresistible force, which renders the property substantially and permanently unfit to be used for the purpose for which it was leased, will make such lease void, at the option of the lessee.

In *Ramanand & Ors. v. Dr. Girish Soni & Anr.*, the court observed, the tenants had a shop rented at the prime location of New Delhi i.e. Khan Market, that has been on rent through a deed of lease since 1975. Immediately prior to the outbreak of COVID-19, the tenants moved an application for suspension of the rent during the lockdown phase which was approximately Rs 3.5 lakhs per month. The tenants argued, that the lockdown triggered a drastic disruption in all commercial operations, along with the business activities of the tenants and hence stated that the lockdown was a force majeure event which is far outside from the reach of tenants to control. The tenants, therefore, prayed for the suspension of the rent or any alternative in terms of suspension.

After determining the factors related to the case such as property's nature, amount of rent, contractual obligations and social and financial status of both the parties, the High Court of Delhi dismissed the application raised by the tenants for the waiver of rent stating that section 32 can only be invoked when there exists a clause of force majeure in the agreement, which in this case did not and section 56, as usual, does not apply to lease agreements<sup>21</sup> (Rajasekaran, 2020).

## **THE INSOLVENCY AND BANKRUPTCY CODE (IBC) AMENDMENT ORDINANCE, 2020**

As mentioned above, the advent of notable amendments was carried by many regulatory bodies to cope with a serious impact on sectors. This led us to further amendments where the government tried to mitigate the losses for Start-ups and Micro, Small, and Medium Enterprises which were also affected due to COVID-19.

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<sup>21</sup> Vasant Rajasekaran and Shweta Vashist, Force Majeure, Lockdown and Lease Rent: Delhi High Court provides clarity, Mondaq, (July 26, 2020, 11:13 pm), <https://www.mondaq.com/india/litigation-contracts-and-force-majeure/942966/force-majeure-lockdown-lease-rent-delhi-high-court-provides-clarity?signup=true>.

Central Government vide notification dated March 24, 2020, came with an amendment in section 4 of Insolvency and Bankruptcy Code (**IBC**), where the minimum amount of default has been raised to one crore rupees (earlier one lakh rupees), in leading to the initiation of Corporate Insolvency Resolution Process (**CIRP**) in respect to corporate defaults<sup>22</sup> (Anon., 2020).

Section 4 states, *“This Part shall apply to matters relating to the insolvency and liquidation of corporate debtors where the minimum amount of the default is one lakh rupee:*

Provided that the Central Government may, by notification, specify the minimum amount of default of higher value which shall not be more than one crore rupees.”

president’s promulgation over Insolvency and Bankruptcy Code (IBC) by an ordinance passed on June 5, 2020, came with two amendments<sup>23</sup> (Anon., 2020). These amendments along with the above-discussed changes were enforced to deal with the ongoing crisis.

First amendment notifies the inclusion of section 10A to the code which disallows the applicant from filing the application for the initiation of CIRP under section 7, 9, and 10, March 25, 2020, onwards up to six months which may extend up to one year. These sections deal with the filing of an application to undertake the CIRP with specifying category of creditors such as section 7 (**the financial creditor**), section 9 (**operational creditors**), and section 10 (**corporate debtor itself**). Moreover, this will help the Adjudicating Authority (NCLT) to deal with lesser cases and disallows the engagement of fresh cases which will lead to the avoiding in the sale of assets of companies at an undervalued price, caused due to COVID-19. However, corporate defaults occurred before March 25, 2020, do not fall under the purview of this suspension.

The second amendment is an inclusion of new sub-section 66(3), which disallows Resolution Professional (RP) to initiate any actions against the fraudulent trading initiated by director/partners of a corporate debtor under section 66(2), only in respect of defaults which has occurred during the exemption period.

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<sup>22</sup> Ministry of Corporate Affairs, (July 26, 2020, 11:15 pm), [http://www.mca.gov.in/ministry/pdf/notification\\_28032020.pdf](http://www.mca.gov.in/ministry/pdf/notification_28032020.pdf).

<sup>23</sup> Ministry of Law and Justice, (July 26, 2020, 11:15 pm), <https://www.ibbi.gov.in/uploads/legalframework/741059f0d8777f311ec76332ced1e9cf.pdf>.



In view of the aberrant situation, NCLAT passed an order in suo moto cognizance on March 30, 2020, in “*Quinn Logistics India Pvt. Ltd. vs. Mack Soft Tech Pvt. Ltd. in Company Appeal (AT) (Insolvency) No.185 of 2018*”<sup>24</sup> (Anon., 2018), to the effect, that the lockdown period is exempt from the estimation of the CIRP duration, which is usually limited to 330 days.

## **FURTHER RELAXATIONS**

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- No late fee or penalty in the filing of Goods and Services Tax (**GST**) returns for the March, April, and May 2020, for companies with a turnover of less than 5 crores.
- As per section 149(3) of Companies Act, 2013, obligation on residing of Director which is to be at least 182 days in India, shall not be treated as a violation.
- Extension of 6 months in the filing of declaration for the commencement of business is to be granted to newly incorporated companies.
- Independent Directors on not attending single board meeting during the present fiscal year, shall not be treated as a violation under the Companies law.
- Obligatory board meetings that are required to be held during the prescribed intervals (120) days under Companies Act, 2013, shall be granted an extension of 60 days.
- No late fee or penalty to be invoked in the filing of documents, statements, returns, etc. during the moratorium period between April 1 to September 30, which are to be filed in the MCA-21 Registry<sup>25</sup> (Biswas, 2020).

## **COMPANIES (SHARE CAPITAL AND DEBENTURES) AMENDMENT RULES, 2020**

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Ministry of Corporate Affairs (MCA) vide notification on June 5, 2020, came with two vital amendments in the Companies (Share Capital and Debentures) Rules, 2014 in respect to the issuance of sweat equity shares as mentioned under Rule 8 of Companies (Share Capital and Debentures) Rules, 2014, sub-rule 4 and creation of security for the debentures in the Debenture

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<sup>24</sup> Quinn Logistics India Pvt. Ltd. V Mach Soft Tech Pvt. Ltd., (2018), ‘Company Appeal (AT) (Insolvency) No. 185 of 2018’  
<https://nclat.nic.in/useradmin/upload/2069479465b69452939eeb.pdf>

<sup>25</sup> Saurav Kanti De Biswas, COVID-19 – Temporary Relaxations for Corporate Compliances, Corporate Cyril Amarchand Mangaldas, (July 26, 2020, 11:17 pm),  
<https://corporate.cyrilamarchandblogs.com/2020/04/covid-19-temporary-relaxations-for-corporate-compliances/>.

Redemption Reserve (**DRR**) under Rule 18 of Companies (Share Capital and Debentures) Rules, 2014, sub-rule 7.

#### **RULE 8 OF COMPANIES (SHARE CAPITAL AND DEBENTURES) RULES, 2014, SUB-RULE 4**

Sweat Equity Shares shall be such securities given to the Directors or Employees of the company at a reduced price or for payment other than cash for the purpose of offering know-how or having accessible assets or interest enhancements, whatever the terms refer to

It is to be mentioned here that a company cannot issue Sweat Equity Shares exceeding 25% of paid-up equity capital of a company at any time whereas start-ups as defined in notification number GSR 180(E) dated February 17, 2016, issued by the Department of Industrial Policy and Promotion, Ministry of Commerce and Industry, Government of India, cannot issue such shares exceeding 50% of paid-up equity capital up to five years from the date of its incorporation. As per the amendment, start-ups from now onwards will be eligible to issue Sweat Equity Shares up to ten years (earlier five years) which will allow them to better organize and retain employees. With the liquidity crunch due to pandemic, the issuance of such shares seems to be a viable option.

#### **RULE 18 OF COMPANIES (SHARE CAPITAL AND DEBENTURES) RULES, 2014, SUB-RULE 7**

Section 71(4) of Companies Act, 2013, read along with Rule 18(7) of Companies (Share Capital and Debentures) Amendment Rules, 2020, states that every company issuing Redeemable Debentures must create a mandatory Reserve known as Debentures Redemption Reserve (DRR) of which 25% to 10% (depending on the classes of the listed companies) of outstanding value must be kept aside for the purpose of redemption of debentures at the time of its maturity<sup>26</sup> (Vadhera, 2020). Such classes of listed companies have been defined further as, All India Financial Institutions regulated by Reserve Bank of India, Banking Companies, Financial Institutions, NBFCs, Housing Finance Companies (HFCs), Manufacturing and Infrastructure Companies, and Unlisted Companies. In addition, the companies/HFCs/NBFCs have an obligation to deposit

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<sup>26</sup> Smriti Vadhera, Easing of DRF Requirement, Vinod Kothari Consultants, (July 26, 2020, 11:18 pm), <http://vinodkothari.com/2020/06/easing-of-drf-requirement/>.

fifteen per cent of the amount due on the debentures in the next fiscal year with the scheduled banks or to invest in government securities on or before April 30 of each year. The amount invested can only be used to repay the outstanding debentures on maturity<sup>27</sup> (Anon., 2020).

Pursuant to the amendment, listed NBFCs registered with the Reserve Bank of India (RBI) pursuant to section 45-IA of the RBI Act, 1934 and Housing Finance Companies registered with the National Housing Bank and other listed companies issuing privately placed debentures are exempted from maintaining the mandatory debenture redemption fund (**DRF**) as stated above i.e. invest/deposit fifteen percent of the amount of the debentures maturing during the year ending on March 31, 2020<sup>28</sup> (Vadhera, 2020).

Liquidity of cash flow will be enhanced after this exemption as listed companies will not have any liability of parking the cash in their reserves i.e. fifteen per cent of debenture amount which needed to be repaid at the time of maturity. Usually, the idea behind DRR is to safeguard the interests of the public when speaking in the context of a public issue, whereas here, a private placement is much of a less hassle for companies.

## CONCLUSION

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India has been praised by many leaders of the world for the methods opted, to deal with the current unprecedented crisis of COVID-19. Point being, the situation has been tackled with great efforts taken not only by the above-mentioned governing bodies but also by many ministries such as Health Ministry, Ministry of Corporate Affairs, Ministry of Shipping, Ministry of Home Affairs, Judicial bodies, Reserve Bank of India (RBI) et cetera. The actions were meant to safeguard the interest of public, listed, and unlisted companies, investors, institutional investors et cetera, in the best possible way. A lot is still being done to cover the loopholes and mitigate the losses which are

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<sup>27</sup> Companies (Share Capital and Debenture Rules) 2014, Securities and Exchange Board of India, (July 26, 2020, 11:18 pm),

[https://www.sebi.gov.in/legal/rules/apr-2014/companies-share-capital-and-debentures-rules-2014\\_34656.html](https://www.sebi.gov.in/legal/rules/apr-2014/companies-share-capital-and-debentures-rules-2014_34656.html).

<sup>28</sup> Smriti Vadhera, Easing of DRF Requirement, Vinod Kothari Consultants, (July 26, 2020, 11:18 pm),

<http://vinodkothari.com/2020/06/easing-of-drf-requirement/#:~:text=considering%20the%20representations%20received%20from,2014%20vide%20notification%20dated%205.>

being endured by many. However, a sharp decline in the economy is still a matter of concern to which, a relief package came as a boon. It includes fiscal stimulus, credit expansion, and liquidity regulatory initiatives for the financial market and lenders, which offers much-needed assistance to enterprises and businesses and extends help to households which are in distress. This stimulus has been deployed in many parts during the different phases of lockdown.

Indian-American Gita Gopinath, IMF's Chief Economist expressed her concern in the World Economic Outlook Update in Washington regarding the negative growth in 2020 and the latest projection of sharp contraction in the economy. However, India's economy is expected to recover in 2021 with the vigorous 6% growth rate, the report said.