

Israni's Novus Lex

Corporate Law Capsule

Covid-19 Special Vol 3 - 8 June 2020

Ministry of Law & Justice

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Various relaxations by SEBI
in light of Covid-19

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regarding RBI, MSME,
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From the Editorial Desk

At the outset, we sincerely hope that you are doing fine and are safe!

The Government has announced a phase wise easing of the lockdown with effect from 1st June 2020 and each state has laid down its own directives on the best way forward. However and very interestingly, unlike most other countries which began unlocking post their Covid19 peak, India has begun unlocking even before it has reached the peak. In a way, our safety is now in our own hands! So please ensure that you wash your hands regularly, step out of homes only when necessary, wear your masks and maintain safe distance at all times.

The Government in its effort to jump start the economy, which took a nose dive due to Covid19, has been tweaking the laws, rules and regulations to adapt to the ever-changing situation. There have been several regulatory changes which have been carried out and some quite radical as well which will have far reaching consequences and which have been discussed in this newsletter.



The previous edition of our newsletter focused on the special changes brought about due to Covid19 upto 12th May, 2020. This issue highlights some of the important changes in law that have been brought about from 13th May 2020 till 7th June, 2020.

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The summaries have been prepared on the basis of content published on the various authorities' websites and manupatra.com



Ministry of Law and Justice

The Insolvency and Bankruptcy Code (Amendment) Ordinance, 2020

On 5th June, 2020, the above mentioned IBC Amendment Ordinance was promulgated and the exact text of it can be found on the following link (copy and paste the link in your browser to open):

<https://ibbi.gov.in/uploads/legalframework/741059f0d8777f311ec76332ced1e9cf.pdf>

This Ordinance is one of the many steps taken by the Government for giving stimulus to the economy, which has been reeling with the fallout of Covid19 and the lockdown. **Two new provisions being Sections 10A and 66(3) have been inserted into the Insolvency Code.**

Why was this Ordinance issued?

1. The Government recognizes the ground reality that the Covid19 pandemic has affected businesses, financial markets and economies all over the world. Particularly, with respect to India, the businesses have been stressed with the lockdown since 25th March, 2020, which has added to the disruption of normal business operations.
2. Due to this adverse situation, the Government has felt that if corporate debtors are pushed into insolvency for defaults committed as a result of the lockdown, then it will be extremely difficult and almost impossible to find adequate Resolution Applicants. It will therefore, not be possible to rescue such corporate debtors who may default in their debt obligations and there is a fear that many genuine companies will suffer the grave consequences of being declared insolvent.
3. Hence, the Government felt that it needs to protect companies and businesses, which are experiencing distress due to this unprecedented situation created by the Covid19 pandemic.
4. So it has been thought fit that those defaults that have arisen on account of the Covid19 pandemic should be excluded for the purposes of the Insolvency proceedings under the Insolvency Code.
5. As a result, the Government has decided to suspend the initiation of insolvency proceedings under Sections, 7, 9 and 10 of the Insolvency Code.
6. Also now the Resolution Professional is prohibited from seeking directions against the concerned Directors or Partners, as the case may be, for making contribution to the assets of the corporate debtor in case of defaults arising on or after 25th March, 2020 till such time to be notified.

Is there a complete suspension of Sections 7,9,10?

NO. There is no blanket suspension of the said provisions.

Although, the language of the Ordinance could have been better worded, it clarifies that the suspension is only with respect to defaults with effect from 25th March, 2020 and shall not apply to any defaults committed under the said sections prior to 25th March, 2020. Therefore, applications can still be filed for defaults committed by corporate debtors prior to 25th March, 2020.

What is the duration of such suspension?

Here is where the language of the draftsman gets vague.

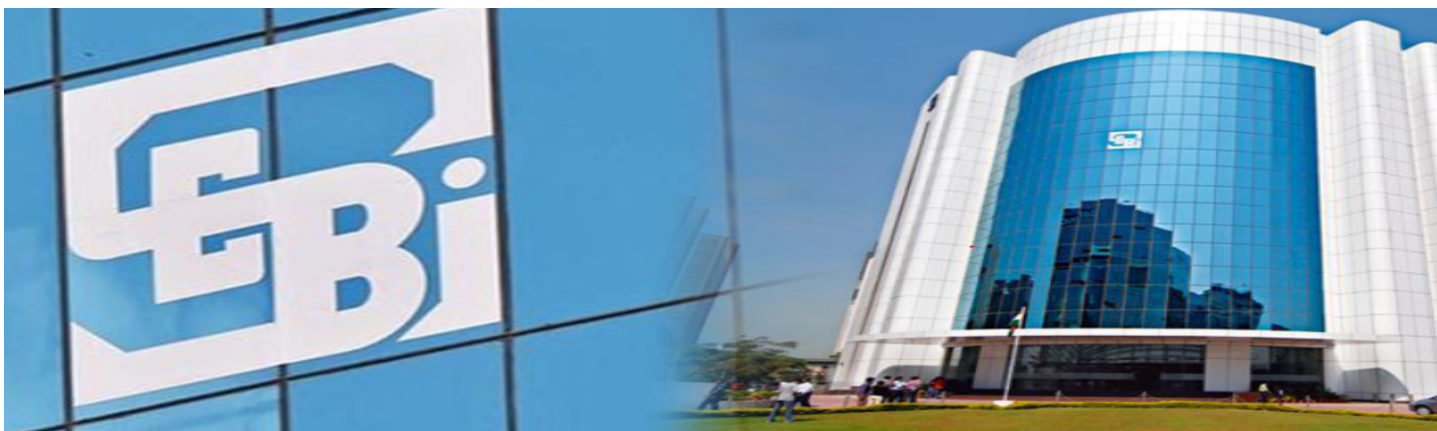
On the one hand it is mentioned that “*no application for initiation of Corporate Insolvency Resolution Process of a Corporate Debtor shall be filed, for any default arising on or after 25th March, 2020 for a period of six months or such further period, not exceeding one year from such date, as may be notified in this behalf:*”

There is a proviso then added which says: *Provided that no application shall ever be filed for initiation of Corporate Insolvency Resolution Process of a Corporate Debtor for the said default occurring during the said period”.*

Upon reading the above provision one is unsure whether the suspension is only for six months or one year or a longer period or whether it's a permanent suspension altogether.

Conclusion

In our view, this suspension does not seem to provide a solution and instead defers the problem. There was no need for a suspension of provisions, rather there could have been a tweaking of the corporate insolvency resolution process. Naturally, valuations have been hit due to this downturn, but then there is also a likelihood for Resolution Applicants to find greater value and to purchase businesses at a bargain price and rescue such companies. Now due to the suspension, the value will get deteriorated completely. Another angle to look at is that all the Creditors are left scratching their heads regarding their options for recovery. We all now the efficacy of our court / arbitration recovery mechanisms. Corporate Debtors may use ingenious ways to prove their default was a direct consequence of the Covid19 pandemic so as to try and escape the rigors of the Insolvency Code. This Ordinance has raised more questions than answers and it will be interesting to see how it plays out in the days to come in the various matters that are pending and new cases that will be filed before the NCLT.



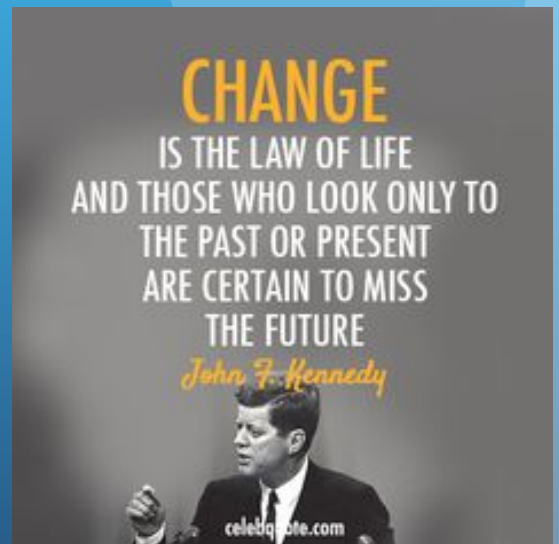
Securities and Exchange Board of India

SEBI has continued with its present policy of bring in several reliefs and relaxations in compliances and timelines for the various stakeholders who are facing wide ranging challenges as a consequence of the COVID-19 pandemic. Some of the important circulars / notifications issued by SEBI are as follows:

- 1) SEBI has vide Circular No. SEBI/HO/CFD/CMD1/CIR/P/2020/81 dated 14th May, 2020, provided that no penal action as envisaged in its circular No. CFD/CMD/CIR/P/2017/115 dated October 10, 2017 will be taken against listed entities for whom the deadline to comply with Minimum Public Shareholding requirements falls between the period from 1st March, 2020 to 31st August, 2020.
- 2) SEBI has vide Circular No. SEBI/CIR/CFD/DCR1/CIR/P/2020/83 dated 14th May, 2020, granted a one time relaxation under the Takeover Regulations and Buy Back Regulations pertaining to open offers and buy-back tender offers opening upto July 31, 2020. Consequently, service of the Letter of Offer and and/or tender form and other offer related material to shareholders may be undertaken by electronic transmission. Also, inspection of material documents is to be provided electronically by the acquirer / company / manager to offer.
- 3) SEBI has vide Circular No. SEBI/HO/MIRSD/DOP/CIR/P/2020/82 dated 15th May, 2020 further extended the timelines for compliance with the regulatory requirements, by the trading members / clearing members / depository participants, mentioned in circular nos. SEBI/HO/MIRSD/DOP/CIR/P/2020/61 dated April 16, 2020, SEBI/HO/MIRSD/DOP/CIR/P/2020/62 dated April 16, 2020, and SEBI/HO/MIRSD/DOP/CIR/P/2020/68 dated April 21, 2020.
- 4) SEBI has vide Circular No. SEBI/HO/CFD/CMD1/CIR/P/2020/84 dated 20th May, 2020, issued an advisory for all listed entities with respect to their disclosures under the LODR Regulations on the material impact of Covid19. SEBI has enumerated the specific aspects on which information is expected to be disclosed by the listed entities. Towards this end, the entities are encouraged to evaluate the impact of the Covid19 pandemic on their business, performance and financials, both qualitatively and quantitatively, to the extent possible and disseminate the same. The entities have been further advised that while submitting their financial statements under Reg 33 of LODR, they may also specify the impact of Covid19. These disclosures are required to be treated as the keeping in mind the principles governing disclosures and obligations of a listed entity as prescribed in LODR Regulations, more specifically, having regard to the requirements of Regulation 4(2)(e) of the LODR on disclosure and transparency.
- 5) SEBI has vide Circular No. SEBI/HO/IMD/DF6/CIR/P/2020/92 dated 4th June, 2020, relaxed the compliance requirements for Alternative Investment Funds and Venture Capital Funds. Accordingly, they may submit the regulatory filings for the months ending March, April, May and June 2020, as applicable, on or before August 07, 2020.
- 6) SEBI has vide Circular No. SEBI/HO/MRD-1/CIR/P/2020/95 dated 5th June, 2020 introduced a framework for a “Regulatory Sandbox”. Under this sandbox framework, entities regulated by SEBI shall be granted certain facilities and flexibilities to experiment with FinTech solutions in a live environment and on limited set of real customers for a limited time frame. This is a welcome move aimed to boost innovation and provide creative solutions in the FinTech space.

Other Developments (SC, NCLAT, IBC, NCLT, RBI, Etc.)

- Vide Circular dated 22nd May, 2020, RBI has extended the time period for completion of remittances against normal imports from six months to twelve months from the date of shipment for such imports made on or before 31st July, 2020.
- Vide Circulars dated 23rd May, 2020, RBI has announced detailed instructions relaxing repayment pressures and improving access to working capital and has also reviewed the timelines under the Prudential Framework on Resolution of Stressed Assets.
- The NCLAT has vide Order dated 22nd May, 2020, held that an ex-employee of a 'Financial Creditor' having rendered services in the past, should not be permitted to act as a Resolution Professional at the instance of such 'Financial Creditor', regard being had to the nature of duties to be performed by such Resolution Professional.
- The NCLAT has issued a detailed Standard Operating Procedure and has decided to hear all urgent cases through video conferencing mode with effect from 1st June, 2020.
- The Department of Registration and Stamps has directed the re-opening of the offices of the Sub-Registrars across Mumbai city with effect from 26th May, 2020 to enable registration of documents.



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- ✚ **The MSME Ministry has changed the criteria for classification of MSMEs as under:**
 - Micro Enterprise** - where the investment in Plant and Machinery or Equipment does not exceed one crore rupees and turnover does not exceed five crore rupees;
 - Small Enterprise** - where the investment in Plant and Machinery or Equipment does not exceed ten crore rupees and turnover does not exceed fifty crore rupees;
 - Medium Enterprise** - where the investment in Plant and Machinery or Equipment does not exceed fifty crore rupees and turnover does not exceed two hundred and fifty crore rupees.**This will come into effect from 1st July, 2020. Notification No. S.O.1702(E) dated 1st June, 2020**
- ✚ **To provide relief during the Covid19 pandemic, the Finance Minister, Smt. Nirmala Sitharaman, has on 13th May, 2020, announced extension of due dates for filing of Income-tax Returns for AY 2020-21. Consequently, those due dates falling on 31st July, 2020 and 30th October 30, 2020 for AY 2020-21 shall stand extended to 30th November, 2020. www.incometaxindia.gov.in**

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