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# Coping up with the economic conditions amidst COVID-19

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*"Necessity is a mother of all invention"*

-Sir Albert Einstein

COVID-19 pandemic has led many to learn important elements of life which was crucial in present age. More number of people have started working from home and adhering to the use of technology which if implemented in the normal course will not only save money and time but also create oneness within the family. Food habits of various individuals have changed on the positive scale. People who used to have junk food have incorporated healthy diet in their lifestyle. Nature has pressed a pause button and seems to breathe. People have realised the true sense of happiness which was being eliminated due to the speed of life.

The entire world has recognised and adopted the "jugaad" approach, a concept common in India, wherein railway coaches are being turned into quarantine centres and Intensive Care Units (ICU). Various courts throughout India has been conducting hearing through online mechanism however like every coin has two sides COVID-19 pandemic will impact India's economic growth "severely".

Daily wage labourers form an important pillar for running an informal economy. Certain labourers work on a leverage of 2 to 3 days savings therefore it is important at this crucial time to provide funds to these labourers directly which will stabilize this sector of the economy to a greater extent. Government has already asked States and Union Territories to transfer funds through the direct benefit transfer mode from the cess fund collected by welfare boards to which some of the State governments have already implemented.

MSME fuels the growth of the economy in any country. At this crucial time the MSMEs are facing liquidity crunch. Assistance to facilitate emergency response by granting loans to MSMEs is of a prime importance. Regulatory authorities are required to shoulder the responsibilities in assistance of MSME sector primarily. RBI has provided a regulatory package where certain regulatory measures announce to mitigate the burden of debt servicing brought by disruptions on account of COVID-19 and to ensure the continuity of viable businesses. It has been permitted to grant a moratorium of 3 months on payment of all instalments falling due between 1st March 2020 to 31st May 2020<sup>1</sup>. Small industries development Bank of India (SIDBI) has also launched a scheme where in loan up to 50 lakh rupees is available at 5% interest rate to MSMEs

engaged in manufacturing of products or offers services related to fighting the novel coronavirus which has been declared a pandemic.<sup>2</sup>

Government should implement more of such measures to provide liquidity in the best possible manner in order to save the economy effectively and efficiently. Fiscal and monetary policies should be addressed at a go and not in a fragmented manner to provide security within the country. Most of the procedural penalties interest has been waived off. However, government's heavy duties and charges including commercial electricity should be curbed in a manner which may provide relief to the business concerns. The objective of the above measures will help to safeguard the credit line in a greater way.

Unemployment problems may erupt within the country because of which certain measures should be launched soon by the government in order to provide job security. Policy decisions have been implemented by the government in relation to protecting companies from getting liquidated at this tough time. As per section 4 of the Insolvency and Bankruptcy Code, 2016 an eligible person can apply for insolvency and liquidation of corporate debtors where the minimum amount of default is Rs 1 lakh however considering the present scenario it is much likely that the companies may default every now and then therefore the amount of default has been increased to rupees 1 crore<sup>3</sup>. Furthermore, the government is also considering to suspend certain

provisions of the Insolvency and Bankruptcy Code, 2016 including Section 7, Section 9 and Section 10 which lays the foundation for initiating the insolvency proceedings against a corporate body for a period of six months. The same was hinted at by our Finance Minister, Ms. Nirmala Sitharaman during her speech on 24<sup>th</sup> March, 2020. Therefore, government may provide relief from insolvency in totality for the next few months which would be a great step towards protection of the economy at large.

Furthermore, companies who are contributing towards the noble cause of combatting COVID-19 are also getting certain benefits under the CSR provisions. Corporate Social Responsibility (CSR) as we all know is a company's responsibility towards the community, environment and society at large in which it operates. It has been well established in the Indian laws<sup>4</sup> which makes it mandatory for companies to fulfil their CSR. It has been clarified that spending of CSR funds for COVID-19 is eligible CSR activity.<sup>5</sup> The general circular further mentions that the funds may be spent for various activities related to COVID 19 under the item nos. (i) to (xii) of Schedule VII. Accordingly, it was further clarified that the contribution made to 'PM CARES Fund' (Prime Minister's Citizen Assistance and Relief in Emergency Situations Fund) shall qualify as CSR expenditure under item no (viii) of Schedule VII of the Companies Act, 2013<sup>6</sup>. Furthermore, a set of FAQs<sup>7</sup> released by the ministry has also stated that

Contribution made to State Disaster Management Authority to combat COVID-19 shall qualify as CSR expenditure under item no (xii) of Schedule VII and any ex-gratia payment to temporary or casual or daily wage workers over and above the disbursement of wages, specifically for fighting COVID-19, can be classified as CSR. However, the FAQ's also clearly mention that contributions made towards 'Chief Minister's Relief Fund' or 'State Relief Fund for COVID-19' shall not be qualified as admissible CSR expenditure.

It should not be unnoticed that government is also trying its best for survival of the people particularly the lower sections who work on daily basis for their living. On 31st of March 2020 the Centre announced that donations to the PM CARES fund will get tax breaks under various Sections of the Income Tax Act, 1961 which would help galvanise contributions to the fund that has been set up to provide relief to the persons affected by the coronavirus outbreak. It was further clarified by the Income Tax department that employees are also entitled to claim tax deductions for donations to PM CARES fund and would qualify for Section 80G benefits for hundred percent exemption under the Income Tax Act, 1961. This fund not only caters to the present situation but also deals with any kind of emergency or distress situation like the one posed by the COVID-19 pandemic and to provide relief to the affected.

Meanwhile, where we have answers to some questions, there are many questions that remain unanswered. One of which is the "*Force Majeure*" clause, which gives rise to a plethora of questions amidst the broken supply chain due to the pandemic COVID-19. The term '*Force Majeure*' comes from the French language meaning 'greater force'. Force Majeure clause purely arises out of contractual obligation agreed upon by and between the parties. In simple words there is no specific provision in the Indian Contract Act, 1872 that explicitly mentions or speaks of the *Force Majeure* clause. The *Force Majeure* clauses are contractual clauses which typically include events that are acts of god or beyond human control. It includes such extraordinary events and circumstance which are beyond the control of the parties to the contract and thus prevents one or all of them from fulfilling their contractual obligation. Therefore, when the events occur as mentioned in the clause, it excuses the parties from performance of the contract. Force Majeure clauses is an expressed clause under the contract and hence language of the said clause and the events covered under the same plays a vital role in its interpretation. Now, the primary concern in the current situation is whether the pandemic COVID-19 would be covered under the force majeure clause or not? Due to the lock down, the economy has come to a standstill with people having little or no flow of income, moreover the said circumstance has rendered parties to the contract incapable of performing their contractual

obligation. This itself gives rise to innumerable questions, whether the employers can use the Force Majeure clause to avoid payment of wages to workers, since the industries are not operational at the moment? can the lessee refuse to make payment towards the leased property? Will the persons involved in the tourism industry like travel agents, hotels etc. be compelled to refund the advance? Will one be held liable to make payment due to cancellation of consignment or failure to supply goods or services? The questions are infinite and the answers limited.

However, there can also be a situation where the force majeure clause does not exist in the contract at all or does not cover a pandemic or situation like COVID-19 outbreak in its ambit. In such situation the provisions of the Indian Contract Act, 1872 being Section 56 comes to our rescue. Section 56 provides relief under “Doctrine of Frustration”. Therefore, in order to invoke this provision, it is essential to establish that the performance of the contractual obligation has become impossible by reason of some event which could not be prevented by the parties and that the parties invoking this section has not induced this impossibility.

Despite having some significant case laws, where the judiciary has beautifully defined and applied the above- mentioned concepts of “force majeure” and “doctrine of frustration”, there still exists a lot of open ends and factual differences making the said case laws easily distinguishable. Thus, only time

will tell, how these relevant questions arising out of this crucial economic situation, would be dealt with by the people and the judiciary.

The government and citizens are trying their best to deal with the fatal virus, COVID-19. Everyone in the country is eagerly awaiting the end of it, and the lifting of the lockdown so that they can go back to their normal lifestyle. However, amidst this hope, there is still an industry that is uncertain about its fate, the tourism and hospitality industry. There are so many people and entities involved in this tourism and hospitality industry including the travel agents, tour operators, people involved in adventure activities, tourist transporters, restaurants, etc who are still unsure as to when their industry will begin to function. Therefore, several associations from the industry like the Federation of Associations in Indian Tourism and Hospitality (FAITH)<sup>8</sup> etc. have approached the Ministry of Tourism seeking some reliefs. The associations have requested that the Goods and Services Tax (GST) and income tax be completely waived for tourism, travel and hospitality industry for a year, a moratorium be declared for payment of EMIs (principal and interest) for term loans for a period of 12 months, the working capital limits be enhanced at interest-free rates, and a support fund be created for salaries and establishment costs. The associations also demanded that provident fund (PF) contributions and Employees’ State Insurance (ESI) be waived off for a year and that GST liability, advance tax, custom duties, excise duties, VAT, and TDS be

deferred for a year. The reliefs that have been extended to all industries in general have been granted to the tourism and hospitality industry as well. However, till now no significant relief has been extended to the tourism industry specifically. The tourism and hospitality industry is the most affected and the last to recover and will most likely continue to face huge losses even after the pandemic ends. These industries contribute to the major percentage of GDP and thus require immediate attention by the Government.

A situation like this both economically and medically has not been experienced in many years, and therefore not just the citizens but also the government is struggling to cope with the current situation. However, everyone is trying to contribute by doing their part to combat the widespread of this fatal virus, COVID-19, especially the Medical practitioner and the frontline workers who are keeping their life at stake to protect and save the others. Even the government is leaving no stones unturned to provide reliefs to the people, especially the poor and needy, by providing them with food and shelter where needed and even by extending monetary help. The economic condition of India and all the other countries of the world that are hit by this pandemic, is no doubt going to be gravely affected, so much so, that it might take years to recover from the same. But that is where the important message lies, the economic conditions can still be restored but not the lives of those who have departed. Therefore, we hope that we all come

out from this pandemic safe and healthy, and then together help the economy to heal.

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<sup>1</sup>[https://m.rbi.org.in/scripts/BS\\_CircularIndexDisplay.aspx?Id=11835](https://m.rbi.org.in/scripts/BS_CircularIndexDisplay.aspx?Id=11835)

<sup>2</sup>[https://sidbi.in/files/pressrelease/Press-Release\\_SIDBI-launches-SAFE-\(SIDBI-Assistance-to-Facilitate-Emergency-response-against-Corona-Virus\)-scheme.pdf](https://sidbi.in/files/pressrelease/Press-Release_SIDBI-launches-SAFE-(SIDBI-Assistance-to-Facilitate-Emergency-response-against-Corona-Virus)-scheme.pdf)

<sup>3</sup><https://economictimes.indiatimes.com/news/economy/policy/govt-raises-default-threshold-to-rs-1-cr-for-invoking-insolvency-proceedings-against-firms/articleshow/74796076.cms?from=mdr>

<sup>4</sup> Section 135 of the Companies Act, 2013, corresponding Companies (Corporate Social Responsibility) Rules, 2014 and Schedule VII

<sup>5</sup>The Ministry of Corporate Affairs has released a general circular being no. 10/2020, dated 23<sup>rd</sup> March, 2020

<sup>6</sup>Office memorandum F. No. CSR-05/1/2020-CSR-MCA dated 28th March, 2020

<sup>7</sup> General Circular No. 15/2020, F. No. CSR-01/4/2020-CSR-MCA, dated 10<sup>th</sup> April, 2020 by Ministry of Corporate Affairs.

<sup>8</sup><https://www.traveltrendstoday.in/news/india-tourism/item/8233-details-on-faith-s-request-for-financial-relief-from-the-govt-for-the-industry>;  
<https://www.moneycontrol.com/news/business/companies/covid-19-impact-tourism-hospitality-on-brink-of-collapse-appeals-for-relief-package-5180671.html>