



AN ANALYSIS THE IMPACT OF COVID-19 AMENDMENTS ON THE CORPORATE SECTOR IN INDIA

*By Shreeya Agrawal and Avani Maheshwari
From NMIMS's Kirit P. Mehta School of
Law, Mumbai*

ABSTRACT

The surge of the novel coronavirus pandemic led to a huge impact of every sector of life of billions of people. It affected lives, economies and everything alike. The spread of this virus was such that more than 160 countries found themselves affected by the same. Some sectors felt the repercussions of this virus's impact on a small scale whereas some felt it almost to the ruins.

This paper analyzes the impact of COVID-19 pandemic on corporate sectors, specifically the amendments made by the government to various acts with the objective of better accommodating the problems and difficulties faced by companies in these difficult times and for the promotion of ease of doing business. This paper also discusses mergers and acquisitions (M&A) and how its procedures were affected by the pandemic as well.

Firstly, the amendment to "Insolvency and Bankruptcy Code 2016 (IBC)" in March 2020 is discussed in line with the rights of homebuyers and it is analyzed in line with violations of the rights of homebuyers and lack of practical implementation with respect to this amendment. Secondly, the June 2020 Amendment to the code is discussed which

suspends any proceedings to ever be initiated in the suspension period prescribed in the Act. This paper analyzes the implications and shortcomings of this amendment with respect to unnecessary results of this amendment.

Thirdly, the impact of this pandemic on M&A transactions. There are various processes that need to be adhered to for the purpose of M&A transactions and the pandemic proves to be a challenge in validating the authenticity of these processes. Further, the impact of the pandemic on further consolidations is discussed. Lastly, the Companies Amendment Act 2020 is critically analyzed in light of its implications on the companies. There are various sections which were amended and others which were introduced by way of this amendment. All in all, this particular amendment act would be considered fruitful if proper guidelines for its implementation are further issued.

Keywords: COVID-19, IBC Amendments, M&A transactions, Companies Amendment Act 2020.

1. INTRODUCTION

Coronavirus, commonly referred to as COVID-19, has grown stealthily to become one of the deadliest viruses, that has been responsible for affecting the lives of almost everyone. It has cost people lives, jobs, houses, financial stability, mental health, and deprived them from enjoying a lot of rights in order to curb it. This virus is said to have arisen from the city of Wuhan in China and has said to have affected more than 160 countries.¹ The "World Health Organization" has declared this virus as a pandemic.

¹ "Coronavirus (COVID-19): Impact on Indian Business and Economy", Rahul Misra,

PaisaBazaar.com, March 2021. Last accessed on 22 April 2021.



The consequences from the spread of the pandemic is being felt in almost all aspects of life. It is pertinent to note that the spread of covid-19 has impacted businesses of almost all sectors and the economies of almost all the countries. As a result, countries all over the world have tried to salvage the remains of the economy and come up with solutions to combat the same.

The Government of India introduced two amendments to the “Insolvency and Bankruptcy Code 2016” in order to curtail the damage of the coronavirus pandemic. “The Insolvency and Bankruptcy Code, 2016 (“the Code”)” consolidates India’s insolvency laws under one comprehensive scheme to ensure value maximization of an insolvent debtors’ assets for the benefit of all stakeholders². This code wasn’t to be seen as another platform which enables creditors in recovering debts from the debtors, but one to keep the interests of all the parties safe with respect to resolutions.

The amendments that are discussed in detail in this article are the amendments dated March 2020 and June 2020. While discussing the amendment of March 2020, the previous amendment is also discussed to mention the position of law with respect to that amendment. These amendments have been critically analysed, along with a discussion on the shortcomings of these amendments in achieving the objectives that they intended to achieve.

The March 2020 Amendment discussion in this paper mainly focuses on the homebuyers in real estate projects. COVID-19 has also

impacted various facets of mergers and acquisition. Nationwide lockdowns and travel constraints have hindered due diligence and many regulatory compliances. However, this has forced many business enterprises to collaborate with other corporates in order to save themselves from going down the road of bankruptcy. In order to facilitate self-reliance, central government has introduced various economic reforms in the corporate sector to improve India’s rank in ease of doing business. This paper primarily deals with the impact of Covid-19 on insolvency procedure amendments, mergers and acquisition transactions along with new reforms made under the light of “Companies Amendment Act, 2020”.

2. RESEARCH METHODOLOGY

2.1 Research objectives

- To analyze the implications of the March 2020 Amendment to the “Insolvency and Bankruptcy Code 2016” with respect to homebuyer rights.
- To study the implications of the June 2020 amendment to IBC.
- To analyze the impact of COVID-19 pandemic on M&A transactions.
- To study the implications of the Companies Amendment Act 2020.

2.2 Research questions

- What are the implications of the March 2020 Amendment of IBC with respect to the rights of the homebuyers?
- What are the implications of the June 2020 Amendment of IBC?
- How are Mergers and Acquisitions impacted due to the COVID-19 pandemic?

² Swiss Ribbons (P) Ltd. v. Union of India, 2019 4 SCC 17.



- What are the practical implications of the Companies Amendment Act 2020?

2.3 Scope and Limitation of the study

The scope of this particular study is limited to the study of the impact of the coronavirus pandemic with respect to amendments in IBC and Companies Act 2013. Additionally the impact on M&A transactions have been studied. There are various other implications and actions that shook the corporate sector of India as a result of the pandemic, but not everything has been covered in this paper.

2.4 Statement of Hypotheses: This study is analysed to assess the hypothesis that the impact of coronavirus on the corporate section has been different for different sectors. Various amendments have been discussed to adjudge that not all steps taken by the government to tackle the impact of this virus on companies and business have been positive in practice.

3. REVIEW OF LITERATURE-

Renuka Mishra and Aakash Batra (2020)³ discussed the implications of the June 2020 amendment to the IBC and critically analyses it. It mentions how suspension of all insolvency proceedings during the suspension period can give rise to problematic situations which does not fall in line with the objectives of the code. If further deals with the fact that the amendment has not suspended proceedings against personal

guarantors, whose liabilities are co-extensive to that of the debtor.

Advocate Jatin Rajput (2020)⁴ discusses the March 2020 Amendment to the IBC with respect to the rights of the homebuyers. It analyses the history of struggle of the homebuyers to be recognized as financial creditors, by way of cases and further asserts that even though they were recognized as financial creditors finally, their rights were again curbed by this amendment. This amendment has various shortcomings when it comes to its applicability, which has been discussed in this paper.

Ananya Raghavendra and Eshvar Girish (2020)⁵ discuss the implications of the Companies Amendment Act of 2020 and analyses whether this was a step in the right direction or not. It discusses various factors of the amendment like the measures of decriminalization, alternate frameworks for offences, Corporate Social Responsibilities, Producer companies, etc. This paper analyses what the amendment act promulgates and mentions that its correct implementation supported by additional guidelines would indeed be a step in the right direction.

Sunondo Mukherjee and Shruti Sundararajan (2020)⁶ studies the Companies Amendment Act of 2020 and lays down the workings of various amendments made under this act. It discusses the implications of foreign listing, listed companies, periodic financial results

³ “Analysis of IBC (Amendment) Ordinance 2020- a step towards protecting the economy or creating arbitrariness?”, Renuka Mishra and Aakash Batra, IBC Laws, June 2020. Last accessed on 25 April 2021.

⁴ “Homebuyers and IBC (Amendment) Act, 2020: Four years, Two Amendments and Journey still continues”, Advocate Jatin Rajput, IBC Laws, May 2020. Last accessed on 22 April 2021.

⁵ “Companies (Amendment) Act 2020: A step in the right direction?”, Ananya Raghavendra and Eshvar Girish, SCC Online, November 2020. Last Accessed on 27 April 2021.

⁶ “10 Key Takeaways From Companies (Amendment) Act, 2020”, Sunondo Mukherjee and Shruti Sundararajan, HAS Advocates, October 2020. Last accessed on 26 April 2021.



which can be asked by the Central Government, reduced timelines for the rights issue, remuneration of independent directors, etc. Procedural compliances have also been discussed in this article.

4. “INSOLVENCY AND BANKRUPTCY CODE AMENDMENT”, MARCH 2020

By way of Notification No. SO 120 (E), the finance minister of India increased the threshold limit of initiating “corporate insolvency resolution process”(CIRP). It was increased from Rupees One Lakh to Rupees One Crore, from 24th March 2020.

This came after the amendment which amended Section 7 of the Code and added that-

“Provided further that for financial creditors who are allottees under a real estate project, an application for initiating corporate insolvency resolution process against the corporate debtor shall be filed jointly by not less than one hundred of such allottees under the same real estate project or not less than ten per cent. of the total number of such allottees under the same real estate project, whichever is less”

This particular amendment has been discussed and analysed, keeping in mind the homebuyers in real estate projects. The amendment of “Insolvency and bankruptcy code” in 2018, Second Amendment, came following the Supreme Court Judgement of Chitra Sharma & Ors. vs. Union of India and Ors.⁷. This amendment finally made homebuyers on equal footing as the other financial creditors, within the code. This

would enable the homebuyers from triggering procedures in cases of delays and refusal to adhere to rights by the builders.

This was followed by the March 2020 Amendment, which is in discussion here, which put a limit of either 100 homebuyers or atleast 10%, whichever is less, to issue claims. Further, it levied that any of the petitions before the courts pending as on March 2020 having less than either 100 homebuyers or 10%, have 30 days to meet the following requirement or their petition would be believed to have withdrawn.

This amendment violates the rights of homebuyers/ allottees of real estate projects in the following ways:

1. Violation of Article 14 of the Constitution-

Section 5, Clause 8, Sub-clause (f) of the IBC, states under the “Explanation that- (f) any amount raised under any other transaction, including any forward sale or purchase agreement, having the commercial effect of a borrowing;”.

Thereby, the money that has been invested by the allottees, which includes homebuyers in real estate projects are considered to be borrowings. The amendment dissects financial creditors further and imposes a condition on that newly created class. This condition hinders them from reaping the benefits available to others under the Code. This amounts to creation of a ‘class within a class’ and is violating Article 14 of the Constitution. The Hon’ble Supreme Court in the case of State of U.P and Ors. v/s Committee of Management⁸, “Mata Tapeswari Saraswathi Vidya Mandir and

⁷ Chitra Sharma & Ors. vs. Union of India and Ors, (2018) SLT 37

⁸ State of U.P and Ors. v/s Committee of Management, 1995 (3) SCR 210



Ors⁹ held that creation of a class within a class was unconstitutional and arbitrary, thus making it ultra vires the Constitution.

2. Unreasonable restriction-

The limitation that has been levied in this amendment is that of the minimum requirement of allottees to initiate a CIRP against a developer.

It is important to note that the limitation so prescribed is based on the number of allottees and not the percentage of borrowings with respect to the total debt. There are several cases wherein one construction project is majorly funded by borrowings from the homebuyers of that project.¹⁰ In that case, it is possible that the stake of the other financial creditors forming the CoC is less as compared to that of home buyers.

It needs to be further noted that if financial creditors having similar or less stake are allowed to initiate proceedings, then why is this benefit not provided to homebuyers who fall in the same category as well. In such a scenario, the limitation on number of allottees is unreasonable, firstly because there is no intelligible differential provided between homebuyers and other financial creditors and secondly, because the distinction is not based on the percentage of borrowings from the total debt, like in the case of operational creditors, for whom a percentage of more than 10% of total debt has been levied to be a part of the “Committee of Creditors (CoC)”.

Further, after this amendment, the case against the constitutionality of which is still pending before the Supreme Court, the above-mentioned amendment of increase in the threshold from Rupees One Lakh to Rupees One Crore was done by the Government. This amendment leaves small creditors, especially operational creditors in a vulnerable position because most of these creditors have claims less than one crore and hence, they won't be able to initiate CIRP proceedings against the corporate debtor. This goes against the very objective of the IBC since it hinders the rights of one party to initiate proceedings and leads to a discriminatory treatment between creditors.

It is important to note that the increase in the threshold is 100 times more than the earlier threshold to initiate proceedings, and such an increase is unreasonable, even after considering the pandemic's effects on the economy.¹¹ Both these amendments take away the rights of creditors, especially the homebuyers, who are a more vulnerable party than the corporate debtors which are companies. Individuals who have invested money to get a house, and other small creditors have less resources and need more support and relief packages than huge companies, hence these amendments which only move to protect the companies go completely against the creditors.

3. Other Shortcomings:

Individual homebuyers would no longer be able to initiate proceedings. Further, the

⁹ Mata Tapeshwari Saraswathi Vidya Mandir and Ors, (2010) 1 SCC 639

¹⁰ “Homebuyers and IBC (Amendment) Act, 2020: Four years, Two Amendments and Journey still continues”, Advocate Jatin Rajput, IBC Laws, May 2020. Last accessed on 22 April 2021.

¹¹ “Weighing the effect and need of the ‘minimum threshold’ on the home-buyers”, Pareekshit Bishnoi and Parveen Kumar Aggarwal, SCC Online, November 2020. Last accessed on 25 April 2021.



requirement of 100 homebuyers or 10% of the homebuyers is on the number of individual homebuyers, however, no data is available to an individual for enabling them to contact other homebuyers which further complicates the proceedings.

Even if somehow this condition is met and the proceedings begin, if any of the homebuyers withdraw at a further juncture due to any number of reasons, it would lead to uncertainty as to the furtherance of the case before the courts, which could lead to wastage of efforts.

The homebuyers who are unable to form the condition laid down by this amendment would not be a part of the decision-making process and would find themselves at the mercy of the CoC.

Even the other remedies available to the homebuyers under other avenues such as consumer forums, RERA, etc. would be rendered futile once a moratorium is granted before the NCLT.¹²

5. “INSOLVENCY AND BANKRUPTCY CODE (AMENDMENT) ORDINANCE”, JUNE 2020

The spread of coronavirus, i.e. COVID-19, globally impacted every aspect of the economy in a way, wherein the government felt that certain safeguards were imperative to be provided to businesses in order to protect them from the perils of the effects of the virus spread. The spread of virus lead to a complete halt to almost all kinds of businesses, leaving

them vulnerable to credit exposures and a very distressed market.

Thereby, the Government of India introduced a series of relief packages, one of them is the amendment to “the Insolvency and Bankruptcy Code, 2016”. This was done by way of the Insolvency and Bankruptcy Code (Amendment) Ordinance 2020, which was passed by the “President of India” on June 5 2020, with immediate effect.

The objectives behind such an amendment have been mentioned in the ordinance as-

1. The Covid-19 pandemic has created stress and uncertainty for business, for reasons which are inherently beyond their power of control.

2. Due to a halt in business activities due to a nation-wide lockdown.

3. Because of the stressed times, it would be difficult to find adequate resolution applicants who could help the corporate debtor in case of default in debt payments.

Based largely on these reasons, this amendment ordinance suspended Sections 7, 9 and 10 of the Insolvency and bankruptcy Code 2016, with the objective to stop the initiation of insolvency proceedings under the said code. This was done by the exercise of the President’s powers under Article 123, clause (1) of the Constitution of India. The Sections which were so suspended are as follows:

“Section 7- Initiation of Corporate Insolvency Resolution Process by Financial Creditor.”

¹² “How will the recent amendment to IBC impact the rights of the homebuyers?”, Ashwini Kumar Sharma, LiveMint, April 2020. Last accessed on 25 April 2021.



“Section 9- Application of initiation of Corporate Insolvency Resolution Process by Operational Creditor.”

“Section 10- Initiation of Corporate Insolvency Resolution Process by Corporate Applicant.”

The suspension of these sections was done by way of addition of Section 10A to the Act, which is as follows-

“10A- Suspension of Initiation of Corporate Insolvency Resolution Process- Notwithstanding anything contained in Section 7, 9 and 10, 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.”

“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.”

“Explanation- For the removal of doubts, it is hereby clarified that the provisions of this section shall not apply to any default committed under the said sections before 25th March, 2020.”

Thereby, the period of six months from 25th March, 2020 is referred to as the Suspension Period. The problematic area of this amendment is that Section 10A bars the initiation of “corporate resolution process” based on defaults in the suspension period, from ever being the cause of initiation of insolvency.

Further, the ordinance amends the Act by the addition of clause (3) to Section 66 of the Act which lays down that a resolution professional is prohibited from filing an application under clause (2) of the section, with respect to default that happened during the suspension period.

Following are the faults that can be ascribed to such an amendment:

1. Date of default in payment-

Section 10A mentions that no proceedings can be initiated for a default which occurs in the suspension period. Thereby, if creditors want to initiate insolvency proceedings at a stage after such suspension period, it would be important for them to determine and ascribe the date of default to after such a period for the proceedings to stand before the adjudicating authority, because the amendment prohibits proceedings for ever being initiated for defaults in the suspension period.¹³

Furthermore, creditors are more likely to wait for the suspension period to exhaust and then ascribe that the corporate debtor still has defaults in payments and initiate the proceedings, but it leaves them vulnerable until that period, with their monies engaged with the corporate debtor and little to no relief for the period of suspension.

2. Creditors’ rights-

It is important to note that this amendment not only leaves creditors remedy less for defaults by the corporate debtor during the suspension period, but also after the completion of this period, if the corporate debtor stills does not pay for the dues that were payable during the suspension period,

¹³ “Analysis of IBC (Amendment) Ordinance 2020- a step towards protecting the economy or creating

arbitrariness?”, Renuka Mishra and Aakash Batra, IBC Laws, June 2020. Last accessed on 25 April 2021.



the creditors cannot initiate proceedings since the default would be dated back to the suspension period.

Furthermore, it is important to note that for operational creditors, especially “Micro, Small and Medium Enterprises (MSMEs)”, there won’t be many protections, other than filing a civil suit which could take years to reach finality, which goes against the very objective of the Insolvency and Bankruptcy Code, which is to ensure speedy insolvency reliefs.

3. Defaults as a result of the pandemic-

It is very important to notice that the objectives of the amendment mention that this relief has been provided due to the coronavirus related pandemic and to help businesses in these stressing times. But there hasn’t been any reasoning provided as to defaults which might not accrue due to reasons which can be ascribed to covid-19. Thereby, there is no nexus between the objective of the amendment and the remedy so provided because a necessary distinction like this hasn’t been made by the legislature.

4. Voluntary insolvency by the corporate debtor-

Not only does this amendment prohibit initiation of proceedings by creditors, but also by the corporate debtor itself. The reason behind such a decision is unclear, because, in cases where the corporate debtor wants to go for insolvency to protect itself from further losses, it cannot do so.¹⁴ Further, if the corporate debtor wants to initiate such proceedings for reasons other than covid-19 related, even then such an act has been

prohibited. The intent of the legislature behind not providing this distinction is unclear.

Alternate solution

It is clear from the ordinance that the intent of the legislature was to make all the defaults occurring in the suspension period as non-actionable, so as to prohibit the triggering of insolvency proceedings in that regard.¹⁵

Thereby, the protection was intended to be applicable only for the defaults which are affected by the reasons ascribing to the pandemic. For that reason, the legislature could have amended the meaning of default under Section 3(12) of the Act and added that the amounts of default in the suspension period cannot be considered while calculating the minimum amount of default under Section 4. By this, the corporate debtors are also protected since any default during this period would not constitute minimum default value, and the creditors would also find relief as they can ascribe other defaults if they form minimum value. Such an amendment also would not have led to any confusion.

It would also have helped in solving the problem of corporate debtor himself choosing to initiate insolvency proceedings to avoid further losses, or for reasons other than coronavirus related.

6. MERGERS AND ACQUISITIONS AMIDST COVID-19

¹⁴ “Insolvency and Bankruptcy Amendment Ordinance: June 2021”, Siddharth Srivastava, Harshit Khare and Mohit Kishore, Khaitan & Co., June 2020. Last accessed: 25 April 2021.

¹⁵“IBC (Amendment) Ordinance, 2020: A Pandemic of Bad Drafting”, Sakal Bhushan, The Leaflet, June 12 2020.



Mergers and Acquisitions is one of the best ways for expansion of business by companies to either venture into any expected line of business or leverage the full potential of ongoing line of business. In Asia, India is one of the busiest hubs for M&A transactions. Massive global companies and investment funds are considering more options to enter India, in a similar way to what happened with China a decade or so ago.

As the effects of coronavirus continue to spread, the corporate world has witnessed enormous changes in mergers and acquisitions. The worldwide lockdown has led to global business disruption which not only has put the firms on a reset mode but has also pushed thousands of companies down the road of bankruptcy.

The unpredictable nature of this virus is making it completely difficult for companies to explore their potential impact on their business prospects. On a large scale and in a very short period of time, thousands of business have significantly cut back their operations, consumer spending has reduced drastically, supply chain has been disrupted, and demand for energy resources and oil has plummeted.

The M&A world has recovered and endured from past global economic crises and the great recession since in the past, financial and economic crises in the market contributed to buyers cutting back or delaying on the acquisition plans but this time the impact is not just on financial system generally but on the multitude of other factors affecting Mergers and acquisition deals.

This includes deal teams, new due diligence issues, the availability of pricing, third-party

approvals and the time it will take to obtain and comply necessary regulatory procedures and approvals. Post this pandemic, many corporates will have to fight for their survival while some may have to face business closure. Due to which there will be a significant drop in the M&A segment.

However, like they say, necessity is the mother of invention likewise adversities bring opportunities. Many companies have ended up collaborating with other companies to survive the unprecedented challenges and some might end up to collaborating post-pandemic. The corona virus is likely to force financial institutions to leverage stressed assets and on the other hand corporates with high cash reserves may find this pandemic appropriate to acquire these stressed assets post crises at a much affordable price.

This might be an appropriate time for such corporates to evolve a plan for expanding their business via acquisition of companies with stressed assets. However, the key challenge for such companies is to identify the risk associated to expand their business and potential business opportunities. A successful strategy would be exploring optimal business opportunity with a perfect mindful strategy along with to mitigate the legal and other risks. Post COVID 19, acquirers will have to focus on business structure, business valuation due diligence and legal documentation.

Due-Diligence-

Due diligence is a process of inquiring, investigating, and verifying an investment



opportunity.¹⁶ It is known as a risk management tool which includes examination of several aspects of business structure, litigation, license, supply chains, finance and employment under a microscopic lens. The process encompasses quantifying liabilities, collecting information, verifying accuracy of business aspects and identifying contractual impediments. It is an indispensable but time-consuming process.

The outbreak of coronavirus has impacted the version of conducting business. It has converted into a virtual platform posing challenges with respect to credibility, and ability to substantiate and process information thereby adversely impacting the very basis of due diligence. Certain documents of utmost importance are required to be kept physically at workplace and access to them is not viable. Therefore, companies conducting due diligence must be aware of potential abuse who may put lockdown restrictions as an inability to access such documents.

Due diligence is a very eminent aspect of M&A transaction and it cannot be dispensed with. Temporarily disposing the traditional methods and adoption of digitalization is the only key in such unprecedented circumstances. Companies can adopt protocols for digital documents and a process for reviewing authentic digital documents. Assessing credibility through video conferencing is an adequate substitute.

Commercial Contracts-

Invocation of force Majeure¹⁷ by counter parties may not be uncommon for

impossibility to perform obligations in such unprecedented circumstances. The agreements of opposite party should be reviewed to anticipate its exposure to non-performance or termination of such agreements. Certain aspects like modification of material terms in light of COVID 19, ability to enforce contracts, termination provisions and consequences of breach needs to be given special importance during due diligence.

Revisiting Business Outlook-

In response to the pandemic, all business enterprises irrespective of their sectors had to revisit their business outlook in order to address concerns relating to liquidity crunch and valuation of enterprise. Diversified enterprises have witnessed an increasing pressure to restructure portfolios and deleverage their balance sheets.

It is no secret that post COVID some companies will have excess cash and look for reasonable price deals to expand or diversify. While some company's transaction may not conclude immediately but once the moratorium is lifted there will definitely be a marked increase and many companies will announce inability to make post moratorium payments to financial institutions which will possibly in turn lead to another round in M&A activity.

Impact of regulatory changes-

Recent announcements relating to the regulatory framework have enhanced and facilitated increased economic activity including mergers and acquisition opportunities which could turn out very well

¹⁶ "The Impact of COVID-19 on M&A Due Diligence: The Way Forward", Anushka Mehul Shah, IndiaCorpLaw (Sept 10, 2020),

¹⁷ "Implication of COVID-19 on listed companies in India", Aninda Pal & Soumya Bhargava, The legal 500 (Sept 9, 2020)



for some sectors¹⁸. The scheme for promotion of manufacturing of “Electronic components and semiconductors” (SPECS) has made many electronic establishments evaluate their structures to make an assessment. of the restructuring requirement through mergers and business/asset transfer.

Many business enterprises in this pandemic could also consider consolidation in order to ensure business continuity. It could be horizontal or. vertical combination which could unlock massive potential to achieve better economies of scale and higher returns. The February amendment of dealing with dissenting majority shareholder is also a relief since it could pave way. for many consolidations in corporate India keeping in mind the current market conditions.

The Ministry of Corporate Affairs has granted relaxation to not charge extra fees for late filing during a moratorium period. The requirement for holding meetings is also made flexible. These changes have and will definitely impact upcoming collaborations.

M&A activities in 2020-

There are various new. considerations for parties who have ongoing or proposed M&A transactions. Such considerations ranges regarding valuations, liquidity crunch, allocation of surplus fund etc. Many business groups may introspect on various business segments that they are engaged with and identify which one is not sustainable and profitable. This introspection may help them in taking decision for either shutting them down or divesting the same.

On the contrary, there may be some business enterprises which could enter into new territories and business enterprises with their established presence. For example, the EdTech space in the past few months have seen many developments. A learning app “BYJU’s” has been steadily gearing up for acquiring WhiteHat Jr. and DoubtNut which will provide BYJU’s to establish its presence in smaller cities and towns across India. It will be able to access diverse customer base since its existing customers are primarily in urban cities.

Aakash Educational. Services Limited, the market leader in test preparation recently set up a new subsidiary for accelerating the consolidation of it digital learning segments. Some acquisitions can be noted in essential online grocery service between BigBasket and milk delivery platform, DailyNinja.

Post COVID 19, the government’s “Make in India” initiative has received more impetus. Thus, there could be growing number of consolidation and investment in Indian origin firms. And with the migrant workforce bring dispersed in lockdown the need for local investments and consolidation at the State level might also be triggered.

7. CRITICAL ANALYSIS OF COMPANIES AMENDMENT ACT, 2020

In order to facilitate self-reliance and ease of living for domestic. corporations, the central government’s COVID 19 economic package included various reforms in the corporate sector. One such reform was with respect to

¹⁸ “Impact of coronavirus threat and restrictions on Indian companies: legal and regulatory changes”, R&P, (Sept 5, 2020)



the Companies Amendment Act 2020. This act amends 61 sections of the Companies Act and 4 sections have been thus added to the act.

Direct listing in foreign jurisdiction-

India currently does not permit listing of domestic corporations on foreign stock exchanges and neither are foreign companies allowed to directly list their equity shares on Indian stock exchanges. The only permissible method to raise capital abroad is by Depository receipts. This amendment introduces direct listing of securities of public domestic corporations in certain foreign jurisdictions, thereby allowing them to access a larger pool of capital. This is especially beneficial for specialized sectors such as technology. The Companies Amendment Act 2020 bestows discretionary powers in the hands of the central government. This leaves scope for arbitrary action on the part of the Government which is contrary to provisions of this amendment.

Decriminalisation of offenses-

Historically, Corporate India has been and suffered the rigor of a strict penal regime for non-compliances and violation under the Companies Act, 1956 and at present, under the Companies Act, 2013. To further ease of doing business, the Act decriminalises penal provisions of the act particularly those which are technical, minor, and lack subjective determination.

This recommendation marks the second attempt to decriminalise the act, the first being the “Companies amendment act, 2019”. The amendment broadly adopts three mechanisms to decriminalise the act. It

includes mitigation from fines to penalty, compounding of offences and an alternate mechanism for redressal.¹⁹

Instead of adjudication by the courts, In-house adjudication mechanism (IAM) will determine penalties for compoundable offences which is appealable before the regional director. There has been a re-categorisation of 23 compoundable offences to the IAMs. Decriminalisation can instil the confidence of domestic players, boost corporatisation of small ventures and boost foreign investment.

Provision such as compounding and IAM framework will simplify and expedite default process by imposing monetary penalty. This will mitigate delays and complexities of criminal prosecution. The promulgation of such an ordinance will be an effective step to ease the highly rigid and regulated corporate regime in India.

The Finance Ministry has also proposed to decriminalise minor offences under numerous other economic legislations as well. This enables India to become a preferred destination for investment purpose to ensure expeditious and effective business. The proposal will help companies save their goodwill which gets affected once the charge of criminality get attached to some technical issues.

The negative effect that decriminalisation can have is that companies will be less vigilant and due importance to compliances will not be paid. The legislative intent will fail if defaults starts increasing in respect of necessary compliances. Moreover, it is not

¹⁹ “10 Key Takeaways From Companies (Amendment) Act, 2020”, Sunando Mukherjee and

Shruti Sundararajan, HAS Advocates, October 2020. Last accessed on 26 April 2021.



completely right to say that some compliances just because they're minor does not affect the general public.

Beneficial Shareholding-

The act defines "Beneficial Interest" as a person who exercises significant influence or holds at least 10% of the shares in a company. Such a person is required to make a declaration of interest in a company. The amendment empowers the central government to exempt, either unconditionally or with certain restrictions, any person from complying with these requirements, if it is deemed in the interest of public.

Exemption from filing resolution-

The current act requires the companies to file copies of board resolutions passed in relation to granting loans, security, and guarantees. This was relaxed for banking companies under Companies Amendment Act, 2017. The new amendment gave extension to non-banking financial companies and housing finance companies in accordance with the government rules. This will surely benefit new entrants and will provide impetus to business.²⁰

Producer Companies-

The new amendment contains special provision to be inserted for producer companies. Producer companies are those companies which are involved in sale, manufacturing, marketing of agriculture and cottage industry produce etc. The different nature of these companies requires different set of rules. The relaxed procedural

formalities dealing specifically with these types of companies and other associated benefits will surely enhance the agrarian economy.

Independent Directors-

This amendment act includes independent and non-executive directors, to receive remuneration in case a company makes no profits or in case its profits are inadequate, as per the extent mentioned under the Act. Prior to this amendment, only the executive directors and the managing director of the company received remuneration even if the company was making no profits or inadequate profits.

Benches of National Company Law Appellate Tribunal-

The amendment provides for setting up of bench other than Delhi. The central government has announced that from March 18, 2020, the constitution of NCLAT will be there in Chennai as well with jurisdiction over Andhra Pradesh, Kerala, Lakshadweep, Telangana, Karnataka, Tamil Nadu and Puducherry. This was done by way of inserting Section 418A. This is certainly a positive step in ensuring that litigants get easier access to appellant tribunal. This will also help in reducing burden leading to speedier justice.²¹

In a time where India is making a mark on the economic front, the implementation of the proposal will definitely help in forming a structured corporate governance framework. It will boost the confidence of stakeholders

²⁰ "Analysing the companies (Amendment) Bill, 2020", Manish P., LSI, (Sept 10, 2013).

²¹ "Companies (Amendment) Act 2020: A step in the right direction?", Ananya Raghavendra and Eshvar

Girish, SCC Online, November 2020. Last Accessed on 27 April 2021.



because they will not have to worry much about the criminal sanctions.

This will however prove to be beneficial only when a culture of respect and adherence is maintained in good faith. The amendment has very intellectually proposed recategorization only of those compoundable offences where mens rea is absent and test of objectivity is fulfilled thereby leaving non-compoundable offences where decriminalisation is not a preferred option. These relaxations will enhance ease of doing business resulting in inclusive growth of the corporations in the wake of COVID 19.

8. CONCLUSION

After the discussions as to the impact of Covid-19 on insolvency proceedings and on mergers and acquisitions, it is clear that a lot has changed in the workings of the corporate world. The pandemic has impacted M&A transactions from both legal and economic perspective. It is prudent that all parties minutely study all terms of the deals before entering into an agreement

Companies Amendment Act 2020 in addition to decriminalization of offences can be further amended to better the corporate compliance system in India. It will make it more investor friendly and improve India's ranking in ease of doing business. The reforms were needed much earlier, rather than being spurred by pandemic. As they say, better late than never.

The relaxations provided by this amendment act would not only help the companies in reducing their compliance costs but would also increase their focus on business activities. Furthermore, the times of the

pandemic require a need for further support for better functioning and ease of doing business for companies to survive. These amendments would further not only ease the companies but also reduce the burden of courts in these testing times.

A permissible list of equities will provide competitive standing in the global market and will assist in raising funds in the international market. These are extraordinary times which will help boost the confidence of corporations facing financial, supply chain and human resource difficulties.

With respect to the amendments of Insolvency and Bankruptcy Code, this paper discusses the shortcomings of these amendments and at some places, also discussed an alternative solution which the legislature could have adopted to curb the situation in a more efficient manner. It is important to note that the speedy response of the Government towards assisting and safeguarding the corporates in the country reflects positively on its governance due to the importance it thus places on the workings of these companies, but it is also important that these steps be such that they help all the parties who are material to the workings of the corporate world and not just the companies per se. This paper thus explores how these amendments by the government support corporate debtors, but at the expense of creditors, who plays a pivotal role in the workings of the corporate world and the economy.

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