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We deal in all the major disciplines and work with clients ranging from global organizations, government and non-profit businesses, to micro, small and medium organizations, private individuals and entrepreneurs.

CORONAVIRUS PACKAGE

“HELPING BUSINESSES RECOVER FROM COVID-19 PANDEMIC”

MICRO, SMALL AND MEDIUM ENTERPRISE (MSME)

Micro, Small and Medium Enterprises (MSME) are the backbone of the industrial landscape of the country. The MSME Industry contributes a sizable portion to the GDP and is seen as a key player for generating employment opportunities. The MSME Industry fosters an environment of entrepreneurship and generates employment opportunities at much lower capital cost. However, the situation has changed drastically over the past few months. The novel coronavirus has gripped the entire globe and has brought even the strongest of world economies down on their knees. The overall impact of the pandemic can be felt by most industries/sectors of the country, especially MSMEs. Most of the companies, proprietorship and partnership firms, etc. that form part of the MSME industry do not have adequate liquidity and reserves to last through this period of pandemic and its after-effects. In these difficult circumstances, these entities would be left with no other option but to either reduce wages/salaries of their employees, lay-off staff or to close the establishments.

POST COVID-19

To curtail the panic among the MSME sector and alleviate the imminent threat of insolvency, a slew of measures have been taken to provide a cushion to the companies likely to face the downturn.

- Exercising the powers under Section 4 of IBC, the Central Government has increased the minimum amount of default for the purpose of initiating proceedings under IBC to Rs 1 Crore from the earlier amount of Rs 1 Lakh which is the maximum threshold limit that the Central Government is empowered to prescribe.
- Regulation 40-C has been inserted in the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 to exclude the lockdown period of 21 days from the 330-day timeline prescribed under the IBC for completion of the insolvency process. However, Regulation 40C does not extend the timeline for any actions to be taken upon the completion of the CIRP. Once a plan is approved, the CIRP comes to an end. The actions contemplated above would arise only once the CIRP is completed and, therefore, the benefit of regulation 40C shall not be available in so far as timelines for implementation of an approved plan is concerned.

RELIEF UNDER INSOLVENCY AND BANKRUPTCY CODE, 2016 (IBC)

- The insolvency proceedings will not be initiated up to 1 year.
- Debts related to the coronavirus pandemic will not be included in default category under the Insolvency and Bankruptcy Code (IBC) for one year.
- Sections 7,8,9 and 10 of the IBC, for MSMEs, have been suspended for a period of 6 months:
Sections 7: initiation of corporate insolvency resolution process by financial creditor),
Section 8: insolvency resolution by operational creditor),
Section 9: application for initiation of corporate insolvency resolution process by operational creditor and
Section 10 initiation of corporate insolvency resolution process by corporate applicant

FIRM'S PRACTICE AREAS

Corporate & Commercial, Estate Planning, Trusts and Private Client, Dispute Resolution, Employment & Labour, Environment, Real Estate and Construction, White Collar Crimes, Start Ups, Non Governmental Sector, Insurance & Pension, Trademarks, Brands & Designs, Renewable Energy Practice, Insolvency And Bankruptcy Practice, Antitrust/Competition, Taxation Advisory, Media & Entertainment, Aviation, Education, Immigration, Cyber Laws, Medico-legal etc.



POWER SECTOR

The Ministry of Power, vide press release dated 28th March 2020, stated that due to the lockdown, consumers are unable to pay their dues to the Distribution Companies (DISCOMS) which has affected the liquidity position of the DISCOMS thereby impairing their ability to pay to the generating and transmission companies. Considering the above situation, the Ministry announced for the following relief to for the DISCOMS:

CPSU Generation / Transmission Companies will continue supply/ transmission of electricity even to DISCOMS which have large outstanding dues to the Generation / Transmission companies. During the present emergency there will be no curtailment of supply to any DISCOM. Till 31st May 2020, the payment security mechanism to be maintained by the Distribution Companies with the Generating Companies for dispatch of power shall be reduced by fifty percent. Directions have been issued to the Central Electricity Regulatory Commission to provide a moratorium of three months to DISCOMS to make payments to generating companies and transmission licensees and not to levy penal rates of late payment surcharge. State Governments are being requested to issue similar directions to State Electricity Regulatory Commissions.

NBFC

NBFCs, housing finance companies and micro finance institutions are finding it difficult to raise debt capital due to a confidence crisis in the debt markets. The government has, therefore, announced a special liquidity scheme of Rs. 30,000 crore to pick up investment grade debt paper from both primary and secondary markets. Such paper will be fully guaranteed by the government.

In addition, to help low rated finance companies to raise debt, the existing partial credit guarantee scheme has been extended to cover primary market debt paper wherein the first 20% loss will be borne by the government.



MAKE MSMEs 'ATMANIRBHAR'

MEASURES ANNOUNCED BY THE GOVERNMENT

Under the mega Rs 20 lakh crore stimulus package for the Covid-battered economy, six aimed at bringing India's vast MSME sector back to life:

Revised MSME Definition

Under the new definition, manufacturing and service MSMEs will be defined under a common metric that will be a mix of investment in plants and machinery or equipment and turnover.

DEFINITION PRE COVID 19		DEFINITION POST COVID 19	
MICRO	ENTERPRISE: Investment of less than Rs 25 lakh in plant and machinery or equipment and of less than Rs 10 lakh for services businesses.	MICRO	ENTERPRISE: Investment less than Rs 1 crore and turnover under Rs 5 crore.
SMALL	ENTERPRISE: Investment of less than Rs 5 crore in plant and machinery or equipment and of less than Rs 2 crore for services businesses.	SMALL	ENTERPRISE: Investment less than Rs 10 crore and turnover under Rs 50 crore.
MEDIUM	ENTERPRISES: Investment of less than Rs 10 crore in plant and machinery or equipment and of less than Rs 5 crore for services businesses	MEDIUM	ENTERPRISES: Investment under Rs 20 crore and turnover less than Rs 100 crore.

Equity Infusion

The Government has proposed to infuse Rs 50,000 in equity in MSMEs through a Fund of Funds that will be operated through a Mother fund and a few daughter fund. The Fund of Funds will be set-up with a corpus of Rs 10,000 crore to give equity-based funding to MSMEs having growth potential and viability. It will also urge MSMEs to list on stock exchanges.

Global Tenders Disallowed

Addressing MSMEs' issue of unfair competition from

foreign companies in government procurement tenders due to the size and strength differ, the government proposed that it will not allow global tenders in such schemes upto Rs 200 crore.

Clearing MSME Dues

The Government and central public sector enterprises proposed to release all pending MSME payments in 45 days. The Central Government assured that fintech enterprises will be used to boost transaction-based lending using the data by the e-marketplace. This e-market for developing linkages for MSMEs will be promoted to replace trade fairs and exhibitions.

Collateral Free Loans

The government has proposed to offer collateral-free loans to MSMEs which will be fully guaranteed by the Centre. There will be a principal repayment moratorium for 12 months and the interest rate will be capped and there will be no guarantee fee. All MSMEs with a turnover of up to Rs. 100 crore and with outstanding credit of up to Rs. 25 crore will be eligible to borrow up to 20% of their total outstanding credit as on February 29, 2020. These loans will have a four-year tenure and the scheme will be open until October 31, 2020.

Subordinate Debt

A partial credit guarantee scheme has been extended to enable promoters of MSMEs to increase their equity. A total of Rs. 20,000 crore will be funnelled through the Credit Guarantee Fund Trust for Micro and Small Enterprises (CGTMSE) whereby banks will lend money to promoters which can be infused as equity in their businesses.

COVID-19: A FORCE MAJEURE EVENT?

UNDER THE INDIAN CONTRACT ACT, 1872

Force Majeure Clause essentially states that on the occurrence of a specified unlikely event that is outside the control of the parties and renders the execution of the contract significantly or wholly, impossible or unreasonable, the party will not be held liable for non-performance.

Invocation of Force Majeure the party claiming *force majeure* is under an obligation to prove that it has taken all reasonable endeavors to avoid or mitigate the *force majeure* event and its effects.

A **Force Majeure** cannot be implied under a contract. In the event the contract does not either provide for a force majeure event or does not expressly provide for “pandemic” to be a force majeure event, in that case the party may seek refuge under Section 56 of Indian Contract Act to prove that the performance of the contract has become impossible/unlawful.

To determine whether a party may claim that the

spread of COVID-19 amounts to an event of “force majeure”, the following vital aspects are to be looked upon:

Whether the contract has a “force majeure” clause or not?

Whether the “force majeure” clause includes events like an epidemic/pandemic/virus outbreak, in expressive terms?

Whether the performance of the contractual obligations has become impossible directly due to the outbreak of COVID-19?

Whether the parties took all the reasonable steps to ensure the performance of the contractual obligations, despite the occurrence of the force majeure event?

If the answer to the all the four questions is in affirmative, in that case the outbreak of COVID-19 can be considered as a force majeure event subject to terms and conditions of the contract.



MSME & FIXED-TERM EMPLOYMENT WORKMAN

MSMEs may hire employees on a fixed-term contract. The central government clarified the central rules vide standing orders that allowed all types of firms to hire workers for a specific time period in all the industries. As a result, a new category of workmen by the name ‘fixed-term employees’ was introduced to the already existing list of workmen such as permanent employees, temporary employees etc.

A “fixed-term employment workman” has been defined to be a workman who has been engaged based on a written contract of employment for a fixed period. Generally, such a workman is hired for a period of one year or the duration of a particular project. The employment contract for fixed-term employment workman expires automatically after the duration for which he was hired on account of non-renewal of the contract.

In the present situation, where the MSME industry is not sure of the demand and supply patterns, fixed-term contracts provide flexibility for such business enterprises where they can match the number of workers with the actual requirement. In this way, business enterprises can mitigate their costs and expenditure by employing workmen only when required and also mitigate procedural and financial risk and uncertainties involved when terminating such employees. Even on the macro-level, employing workmen on a fixed-term basis would help fix the problem of short-term unemployment in the country.



LAW OF LIMITATION

The Hon’ble Supreme Court in “*In Re: Cognizance for extension of limitation*”, Suo Moto Writ Petition (Civil) No. 3/2020 has directed that the period of limitation in all proceedings before the courts/tribunals, shall stand extended w.e.f. 15th March, 2020 till further orders.

The effect of the judgment of Hon’ble Apex Court ordering for exclusion of the duration of lockdown while computing the period of limitation, to our understanding, also applies to timelines fixed for completion of pleadings and/or refiling of pleadings before the courts/tribunals.

The period of limitation, to our understanding may also stand extended w.e.f. 15.03.2020 to:

- **Arbitration Proceedings:** However, it is up to the Arbitral Tribunal to agree for extending the period of limitation.
- **Negotiable Instruments Act:** The time period from 15.03.2020 to such date as yet to be notified by Hon’ble Apex Court shall stand excluded while computing the period of limitation of 30 days for filing the complaint under Section 142 of Negotiable Instruments Act, 1881

Although the Hon’ble Apex Court does not specifically clarify on the position extension of time period in respect of proceedings that are not before the court/tribunal. Issuance of Demand Notice in case of cheque dishonour does not require any physical filing before any court and therefore, in the absence of any specific clarification of the Hon’ble Apex Court on this issue, parties should at least issue Demand Notice within 30 days by way of email, if the physical delivery through speed-post is impossible despite best efforts or communicate it through other e-modes and preserve it for record purposes.

CONCLUDING REMARKS

- The exclusion of lockdown period and the increased threshold limit will ensure that the Micro, Small and Medium Enterprises have enough cushion to recover from the financial distress caused by the COVID-19 pandemic.
- The collateral-free loans to MSMEs will act as initial seed money for these small enterprises hit by zero cash flow due to the national lockdown.
- The proposed definitional change for MSME sector has addressed the existing fear among MSMEs of graduating out of the benefits and hence suppressing the urge to grow.
- The parties can take refuge under the force majeure clause, if epidemic/pandemic is defined as an event of force majeure in the contract. If not, the parties will have to satisfy the conditions of Section 56 of Indian Contract Act to establish that it was impossible/unlawful for the parties to perform their contractual obligations.
- The performance of a contract generally does not get “frustrated” merely because it may become onerous qua one of the parties, even if on account of some unforeseen event.
- The obligation to make payments under the contract cannot be delayed/withheld-claiming lockdown as a Force Majeure Event.

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