

LEGAL AND COMPLIANCE RELATED UPDATES: COMPANY LAW AND INSOLVENCY AND BANKRUPTCY CODE

In wake of the recent outbreak of Coronavirus (COVID-19) and subsequent lockdown of the nation, the National Company Law Tribunal ('NCLT') and National Company Law Appellate Tribunal ('NCLAT') have taken some precautionary measures in order to reduce the footfall in Court premises so as to prevent the further spread of the contagious disease. The Ministry of Finance has also announced relaxations in certain deadlines and some changes in Insolvency and Bankruptcy Code, 2016 ('IBC') in order to protect the corporates in the distressed times.

CLOSURE OF NCLT

Vide Notice, dated 22.03.2020, NCLT has notified that all NCLT Benches shall remain closed from 23.03.2020 to 31.03.2020. Further, it has been notified that in case of unavoidable urgent matters, on application by the aggrieved, through email to the registry of NCLT Chennai, after service of notice to the other side, the Hon'ble Acting President sitting singly at Chennai will examine and pass necessary orders on Wednesday and Friday.

Vide the same Notice, it has been further clarified that with regard to IBC, matters regarding extension of time, approval of Resolution Plan and liquidation will not be construed as urgent matters. These matters will be taken up as soon as regular benches start functioning.

Further, on 24.03.2020, the Hon'ble Prime Minister addressed the nation and declared a nation-wide lockdown for a period of 21 days starting from 25.03.2020 till 14.04.2020. Vide Order, dated 24.03.2020, the Ministry of Home Affairs ('MHA'), Government of India issued directions in this respect. NCLT vide Notice, dated 28.03.2020 extended the direction given in the Notice, dated 22.03.2020 for closure of all Benches till 14.04.2020.

EXTENSION OF LIMITATION

The Hon'ble Supreme Court of India took Suo Motu cognizance of the situation facing the country on account of COVID-19 virus and resultant difficulties that may be faced by the litigants across the nation in filing their petitions / applications / suits / appeals / all other proceedings within the period of limitation prescribed under the general law of limitation or under special laws (both Central and/or State).

In view of the situation, vide Order dated 23.03.2020, the Hon'ble Supreme Court has held that irrespective of the limitation prescribed under the general law or special laws, whether condonable or not, in all such proceedings, the period of limitation shall stand extended w.e.f. 15.03.2020 till further order(s).

Vide Notice, dated 24.03.2020, NCLT specified that the aforementioned Order, dated 23.03.2020 of the Supreme Court is applicable to all litigants with regard to the matters falling within the jurisdiction of NCLT.

CLOSURE OF NCLAT

It is indisputable that NCLAT shall also remain closed for 21 days beginning from 25.03.2020 in compliance of the Order, dated 24.03.2020 issued by the MHA, Government of India. According to the notification of NCLAT, dated 24.03.2020, for listing of urgent matters, the concerned may contact the Registrar telephonically on any day before 01.04.2020. It further specifies that the period of limitation for filing Appeal with NCLAT shall stand extended w.e.f. 15.03.2020 till further order(s), as per the direction dated 23.03.2020 passed by the Hon'ble Supreme Court.

INCREASE IN THE THRESHOLD OF DEFAULT TO TRIGGER IBC

The Hon'ble Finance Minister of the country held a Press Conference on 24.03.2020 and dealt with numerous aspects relating to Income tax, Companies Act, IBC etcetera and extended numerous deadlines in view of the current situation in the nation.

With respect to IBC, it was stated that the current threshold of default to trigger IBC which is INR 1 Lakh is being raised to INR 1 Crore so as to prevent triggering of Corporate Insolvency Resolution Process ('CIRP') proceedings against Micro, Small and Medium Enterprises ('MSMEs'). It was further specified that the same is implemented with immediate effect.

It was also clarified that the situation shall be monitored and if it continues to be similar to the current situation beyond 30.04.2020, then the Ministry may have to consider suspension of Section 7, Section 9 and Section 10 of the IBC for a period of 6 months so as to prevent the companies from being forced into insolvency proceedings in such force majeure causes of default.

In furtherance of the above, the Insolvency and Bankruptcy Board of India ('IBBI'), vide Notification, dated 24.03.2020, notified that the Central Government has increased the minimum amount of default to INR 1 Crore for the purposes of Section 4 of the IBC which deals with application of Part II of the Code – i.e., Insolvency resolution and liquidation for Corporate Persons.

SPECIAL MEASURES UNDER COMPANIES ACT AND LIMITED LIABILITY PARTNERSHIP ACT

Vide General Circular No.11/2020, the Ministry of Corporate Affairs ('MCA') issued the following measures in order to reduce the compliance burden and other risks of the corporates,

- i. During the moratorium period – i.e., 01.04.2020 to 30.09.2020, no additional fees shall be charged for late filing in respect of any document required to be filed in the MCA-21 Registry.
- ii. The gap between two Board meetings may extend to 180 days till the next two quarters, instead of 120 days which is required under Section 173 of the Companies Act, 2013.
- iii. The Companies (Auditor's Report) Order, 2020 shall be made applicable from the FY 2020-21 instead of FY 2019-20.
- iv. The Independent Directors are required to hold at least one meeting without the attendance of Non-Independent Directors and members of management as per Para VII (1) of Schedule IV to the Companies Act 2013. For the FY 2019-20, if such a meeting was not held, it shall not be considered a contravention of law.
- v. Extension of deadline from 30.04.2020 to 30.06.2020 for complying with the requirement to create the deposit repayment reserve of 20% deposits maturing the FY 2020-21, as required under Section 73(2)(c) of the Companies Act, 2013.
- vi. The requirement under Rule 18 of the Companies (Share Capital & Debentures) Rules, 2014 to invest or deposit at least 15% of amount of debentures maturing in specified methods of investments or deposits before 30.04.2020, may be complied with 30.06.2020.
- vii. Newly incorporated companies are required to file a declaration for Commencement of business within 180 days of the incorporation under Section 10A of the Companies Act, 2013. Another period of 180 days shall be allowed for such compliance.
- viii. Non-compliance of minimum residency in India for a period of at least 182 days by at least one director of every company as per Section 149 of the Companies Act, 2013, shall not be treated as a non-compliance for the FY 2019-20.
