

Contact Testing and Tracing for Sick MSME Architecture- A Professional Board will help



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Introduction

At a time when, “Make Small Strong” is the mantra to support small businesses, along with smart solutions to elevate marketing expertise, equally important is the guide to build business successively and leverage independently on available opportunities.

Changing business climate regimes are not different from wars being fought in history of times. Though wars were guided by war heroes, able kings and their advisors, today's boardroom and the war to survive economic challenges are not different from the past. Names have changed but the war remains the same, war for “Survival of the Fittest”.

MSME Governance and the Covid-19 Effect

In the changing kaleidoscope, MSMEs have been the gamechangers to generate employment, trade and entrepreneurship. However, MSMEs terribly lack the essentials of a strong Board who can guide them towards with the right kind of decision-making, equipping themselves with the necessary due diligence which would make them stronger in the economic environment, to not only sustain but survive.

Weak and manipulated board structures, poorly designed financial products etc. have weakened productivity levels in the MSME universe. Moreover, strength induced by government policies will not create an enabling environment for the MSMEs to fight unprecedented economic challenges such as Covid-19.

On the other hand, recently announced economic reforms during the Covid-19 apocalypse will have short vision with no far-reaching effect on the MSME economy, if corrective actions are not taken in the MSME architecture itself.

It is evident that MSMEs face a huge challenge in reference to financing options, but at the same time when options (relief measures) were made available, most of the MSMEs could not advance towards them due to their weak inner engineering.

The initial 21-day lockdown sent a shiver in the spine across the domestic MSME world, which indicates their weak financial planning, which is yet not fortified against economic casualties such as the current global health crisis. There was an evident risk that a fleet of MSMEs would be referred to NCLT/IBC, which led to the introduction of Section 240A, an ad-hoc arrangement to alter the IBC itself.

The New India thus, seeks an environment not of stop-gap measures such as these, but a coupling process which will give active feedback about entrepreneurial health way before the actual calamity strikes.

A brief analysis of the relief measures announced during the pandemic in the torpedied economic conditions suggests that those measures were a blend of gears to beef up MSMEs and its allied sectors. However, they were effective only for a small percentage of beneficiaries, who were doing well even before the pandemic began, and which have been minimally affected by the pandemic led lockdown.

The MSMEs worst affected are the ones who were already in bad shape even during the pre-pandemic period. The reasons for their debility primarily are global slowdown, domestic recession and demonetization, and hence many of them were referred to the NCLT/ IBC.

The Global Scenario

The global slowdown was an external shock. However, domestic recession and demonetization were intrinsic shocks for which the industry was not responsible. In spite of a wide consumer base and strong local demand, MSMEs faced survival issues primarily due to a long wait for higher ticket loans and rising credit cost which not only weakened their prospects but, also affected company health with rising issues in organization's due diligence.

An unbiased, powerful, efficient and an exemplary Board would have come handy to bring about the requisite turnaround in the

companies. This aspect, however, was far from sight with more and more companies going down the drains and increasing burden on NCLT.

The IBC Act, which was proposed to be one of the best solution in the Catch 20-20 scenario engulfing many active MSMEs became a whip in hand and a strong tool for Financial Creditors and Operational Creditors. Nevertheless, IBC's objective aiming at Value Maximization and Resolution was somewhere lost in the process. This aspect has allowed oligarchic propositions and takeovers.

The recent relief measure announcements are no doubt once again cut paste arrangements. And certainly, contagious tornados which will engulf not only the sick but healthy agencies along with governmental agencies in its wide mouth only to be stuck in its narrow base. New policies too are certain to get stuck in the unknown dead ends.

To avoid this situation, a feedback system informing on their health and responsible actions, needs to be successfully instituted. This is in reference to the newly introduced GST framework which put already stressed industry under higher distress. On the other hand, implementation of VAT in UAE was as smooth as cutting a cake. Standardized and Professional Board could have helped guide through this distress.

Further, if a new framework of IBC is being framed for the MSME sector then the same needs to be applied according to the losses incurred and the same needs to be implied retrospectively.

The new plan needs to resolve the existing MSME referrals along with the ones affected by the COVID-19, making the scope an exhaustive one, for facilitating MSME sector's survival, revival and thrive for growth.

Introduction of Section 240A

The Section 240A was introduced as a part of the announced Relief measures to guide stressed MSMEs due to COVID19 out of distress. However, already financially stressed MSME sector will not move miles, if the sectors in contact, too are under stress and which are not covered. The section 240A is highly appreciated for the following, however the same brings riddles in its draft inception.

"Section 240A specifically dispenses the applicability of Section 29A clause (c) and (h) of the Code, in case the Corporate Debtor is an MSME, which relates to such promoters who have become NPA can also bid for their companies. Moreover, any bidder who is otherwise disqualified on the ground that its account has become an NPA can also bid for an MSME".

This will grossly violate the principles of natural justice to the past promoters who have lost their companies due to perils of global slowdown etc. and who are not willful defaulters but are rendered inapplicable to bid for their own company due to the restrictions imposed in the Section 29A.

If at all, the Section 240A is introduced, its impact should be

made universal and should pertain to all MSMEs weathered due to global slowdown, domestic recession, demonetization etc. leading to stress on their financial assets.

All resolution applicants for MSMEs including the promoters of the MSMEs as per the new definition should be allowed to bid, even if they have provided guarantees that have been invoked by the lenders. The Amendment should also empower the Central Government to allow further exemptions or modifications with respect to the MSME Sector, if required, in public interest. With the introduction of these mindful exemptions, it is perceived that this sector may find bidders, and they won't have to undergo cheap liquidation.

As per some of the judgments,

1. The Hon'ble Supreme Court of India in *Swiss Ribbons Pvt. Ltd. vs. Union of India and Ors.* [Writ Petition (Civil) No. 99 of 2012, judgment dated 25 January 2019] while recognizing the importance of adding MSME friendly provisions in the Code, found no fault in the exemption of MSME under Section 29A of the Code.

The Court further perceived the business of an MSME to attract interest from a promoter of an MSME and may not be of interest to other resolution applicants. Therefore, if MSME's aren't exempted, then other resolution applicants may not come forward and it would lead to a liquidation of the MSME instead of resolution.

2. Further, in a recent judgment of *Saravana Global Holdings Ltd. & Anr. Vs. Bafna Pharmaceuticals Ltd. & Ors.* [Company Appeal (AT) (Insolvency) No. 203 of 2019, decided on 04.07.2019] the Hon'ble NCLAT has observed that the 'Committee of Creditors' shall consider the feasibility, viability and such other requirements, as has been specified by the Board.

If it proposes maximization of the assets and is found to be feasible, viable and fulfil all other requirements as specified by the Board, the company being MSME, it is not necessary for the 'Committee of Creditors' to follow all the procedures under the 'Corporate Insolvency Resolution Process'.

The Parliament with specific intention amended the provisions of the 'I&B Code' by allowing the Promoters of 'MSME' to file 'Resolution Plan'. The intention of the legislature shows that the Promoters of 'MSME' should be encouraged to pay back the amount with the satisfaction of the 'Committee of Creditors' to regain the control of the 'Corporate Debtor' and entrepreneurship by filing 'Resolution Plan' which is viable, feasible and fulfils other criteria as laid down by the Insolvency and Bankruptcy Board of India (IBBI).

As such the Hon'ble Appellate Tribunal held that in exceptional circumstances, if the 'Corporate Debtor' is an MSME, it is not necessary for the Promoters to compete with other 'Resolution Applicants' to regain the control of the 'Corporate Debtor'.

Thus, when such facts have already been debated in Courts of

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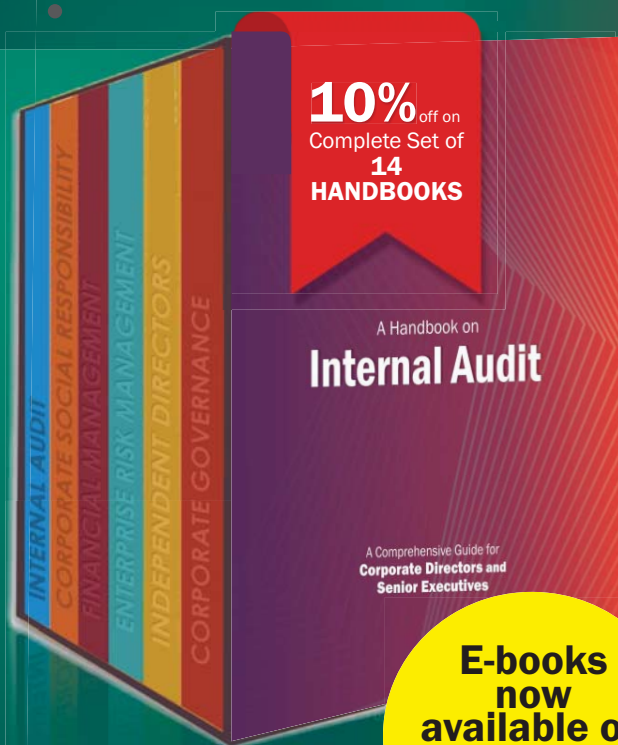
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Justice and favorable judgments have been passed in favor of MSME promoters, the government needs to take care to cover the entire MSME sector retrospectively and make the amendments universal for the entire MSME community to remove bias in judgment.

Most of the MSMEs have already been through a legacy of restructuring instruments such as the CDR Scheme (2001), SDR, S4A, JLF&CAP, 5/25 and BIFR, DRT and SARFAESI Act. However, each introduced their own viral contraindications and side effects with turnaround, revival and recovery far behind in scale and scope. The present IBC also lags behind in its own operations for MSME. These schemes have not shown any sizeable effect in overcoming the financial stress, and in fact, has increased it over the years, leaving the MSME sector in dilemma with loss in entrepreneurial vigor.

If all of the above were scheduled to kill sickness in the MSME ecosystem, then the same has yet to receive a sizeable commendation.

The IBC/ NCLT process is an oversized cloak for a tiny structure in context to resolution. Finances are already a problem for the MSME and post resolution takeover by a bigger cat is cheap

acquisition.

Conclusion

- A responsible feedback system checking their viability is equally important to be introduced to check sickness through Standard, Healthy and Professional Board, Company and Regulator interface.
- Minimum Government and Maximum governance under professional and standardized Board having adequate knowledge of ground realities is the 'need of the hour'.

Contact testing and tracing has been the key to COVID19 testing and elimination of the same and the same method needs to be applied for the sick MSME architecture.

** **Dr. Yadnya Pitale's** professional career spans over 20 years, enriched with knowledge from various sectors of the industry with impactful footprints in financial services and MSME representation. This led to development of major BSE publications with the latter adding six major research studies based on primary and secondary research in the MSME sector. She is the member of Institute of Directors.* ■