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| **CAN EMPLOYEES BE PAID LESS DURING LOCKDOWN?** |

After the outbreak of COVID-19 when the country-wide lockdowns were announced and all the business, industries and establishments were bound to shut down their operations except the essential services, the questions which came across the mind of every employee were, “How they will survive in these tough times?, Will their employer support? Will they be paid during lockdown? OR “NO WORK, NO PAY.” principle will be adopted?” To worsen the condition, when the lockdown was extended, with the beginning of the second inning of lockdown it had a deep impact and no one remained untouched and everything came to a halt disrupting the whole economy during lockdown. The life-threatening question was, “Whether after lockdown, shall we be able to join back the office or we would be handed over the pink slip?”

On one hand, employees were worried about their salaries, jobs and on the other hand, employers were in dilemma whether to pay or not, whether to downsize or not, as the environment for business (despite all the efforts by the Government right form relaxing statutory compliances to allowing moratorium period for repayment of debts) was not conducive with either negligible or no profit despite being humane, they needed money to pay off their workforce and money cycle or flow of money was disrupted.

While the country was coming to terms with the nation-wide lockdown, a huge exodus of migrant laborers trying to go to their hometowns started taking place. Such a mass efflux of laborers increased the risk of spreading the virus which prompted the Central Government through Ministry of Home Affairs to issue an order on 29th March, 2020 in exercise of its power under Section 10 (2) (l) of the Disaster Management Act, 2005 directing the states and union territories to ensure adequate arrangements of temporary shelter and provision of food for migrant workers who had already moved out / got stranded in such states and

union territories amongst other directions.

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In view of the prevailing lockdown imposed by various states, Ministry of Labour and Employment issued an advisory on 20th March 2020 appealing to all employers’ associations not to terminate their employees or cut wages of its workers in view of the lockdown. The advisory also stated that all employers of public/private establishments are advised to extend their cooperation by not terminating their employees, particularly casual/contractual workers or reduce their wages. It further stated that if any place of employment is to be made non-operational due to COVID-19, the employees of such unit will be deemed to be on duty.

Further, it stated that the “no work no pay” judicial principle cannot be invoked in the present circumstances as neither the employers offer work nor the workers are able even if willing to report for work. So, the employers cannot deduct wages for absences due to national lockdown.

**WHAT IS THE LEGAL MEANING AND IMPLICATION OF THE ORDER?**

Order of 29th March, 2020 was issued by the Home Secretary, the Ministry of Home Affairs and the Government of India, in exercise of the power conferred under Section10(2)(1) of the Disaster Management Act, 2005. This Order is binding upon all the concerned parties. The Section 10(2) (1) of the Disaster Management Act, empowers the National Executive Committee to lay down direction to the Ministries or departments of the government of India and State authorities, for preparing disaster management plans. Section 51 describes the punishment for any obstruction or non-compliance of any such directions passed under this Act. Section 72 creates an overriding effect, regardless of anything contained in any other law that may be inconsistent with the orders under the

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Disaster Management Act for the time being in force. The said order under the Disaster Management Act cannot be set aside until any High Court of any State or the Supreme Court modifies it or sets it aside.

**CAN THE WAGES BE DEDUCTED OR REDUCED?**

The Orders issued by the Central Government dated 20.03.2020 and 29.03.2020 pertaining to lockdown and payment of wages should be mandatorily followed. These must be continued to follow if there is any further extension or revision of the Government Order till the expiry of the same.

The orders invoked the extraordinary powers vested with the Executive committee and the Disaster management bodies under Sections 10 and 12 of the Disaster Management Act, 2005. These sections provide blanket powers to the Committee to take any measure as deemed necessary to either prevent or contain a disaster.

The non-observance of the advisory to pay salary during the lock down period may result in filing of complaints by the aggrieved workmen before the authorities. Furthermore, an employee could be denied wages only when he was absent from work or when he was on strike and, therefore, all employees, including contract workmen, were entitled to full wages

lastly drawn by them during the period of lockdown.

**CAN THE EMPLOYER COMPEL AN EMPLOYEE TO EXHAUST HIS/HER ANNUAL LEAVE?**

In general, annual leave is a statutory entitlement to be availed at the employee’s discretion and as per terms of company policy. It cannot be forced

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upon the employees, hence ideally speaking, leaves during lockdown can’t be adjusted against accrued leaves of the employees.

**CAN EMPLOYEES BE SENT ON LEAVE WITHOUT PAY?**

Companies cannot force employees to take leave without pay amid the lockdown imposed by the government to control the spread of COVID-19. Whether the employer can reduce, downsize the workforce on account of business slowdown due to lockdown pursuant to COVID-19?

The Central Government has issued advisories and orders stating that even if place of business has become non-operational due to COVID-19, its employees shall be deemed to be on duty and the employer should not terminate any employees. The government advisories/orders further direct that the employee should be paid full remunerations without deduction.

In this regard, state governments such as those of Gujarat, Haryana, Karnataka, Telangana, have issued advisories/orders asking employers to refrain from terminating or reducing the wages of their employees.

The State of Uttar Pradesh has issued a Notification dated 20th March, 2020 stating that the employees/workers, working in factories/shops/establishment which are closed temporarily vide order passed by the State Government or District Magistrate shall be provided holidays with wages by the employer for the period of temporary closure. It is, therefore, advisable that before taking any action for reduction of the workforce during the lockdown, the employer must check the advisories/orders/ notifications issued by the State where its business is situated or where the employer has its establishment. In a case where no such advisories/orders are issued, reduction or downsizing can be done subject to the

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policies of the employer, terms and conditions of the employment agreement/contract and complying with the due process of law.

**DOES THE DISASTER MANAGEMENT ACT OVERRIDE THE INDUSTRIAL DISPUTE ACT?**

Order of 29th March, 2020 directing the payment of wages during the Pandemic has been issued under the provisions of the Disaster Management Act. Section 72 of the Disaster Management Act is a non-obstante clause giving overriding powers to the Government in the time of a disaster, and specifying that “The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act”. It will thus override the sections of the Industrial Disputes Act, 1947.

**EMPLOYER’S DILEMMA**

There is an issue of employers’ obligation to pay wages during the COVID-19 lockdown period. An overwhelming majority of the industries, shops and establishments have taken a holistic view and have hence been empathetic to the plight of their workforce.

The basic idea about our recommendations is that the industry should also not be forced when the situation is beyond their control. The law has to be reasonable. It is for the government to step in and extend a helping hand for the industries causing financial hardship to industrial establishments: The government cannot be permitted to cause financial hardship to industrial establishments by compelling them to pay “Wages” without getting any work done from the

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employees during the lockdown period. Specifically, when the employers are on the same boat struggling hard for survival due to mounting losses. Establishments will be forced into insolvency; If the notifications are implemented for entire lockdown period, many MSME establishments would be forced into insolvency and loss of control of business as they will be compelled to pay for manpower during the shutdown without receiving any substantial revenue from their customers, thereby hampering the right of the petitioner under Article 19(1)(g). Many establishments failing to bear the financial burden and hardship may have to close their businesses. The very notifications issued for the benefit of the workers might end up adversely impacting those workers who would be rendered unemployed.

**WAY FORWARD**

The intentions of the government appear to be noble. The need of the hour is a dedicated framework in the form of monetary subsidies similar to the ones declared by governments across the globe. The employers are finding ways for generation of revenue for sustenance and governments are also finding ways to create a balance between revenue generations with least impact on people.

Madhya Pradesh and Uttar Pradesh have decided to stay labour laws in the name of reviving the economy under the cover of the COVID-19 pandemic. Uttar Pradesh government has decided to dilute certain labour laws in the state for the period of next three years, while Madhya Pradesh proposed a series of changes including the need to maintain official records for the purpose of inspection.

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The Ordinance passed by the Uttar Pradesh government stated that government has cleared the ‘Uttar Pradesh Temporary Exemption from Certain Labour Laws Ordinance, 2020’ to exempt all establishments, factories and businesses from the purview of all labour laws except the Building and Construction Workers Act, Bonded Labour Act, women and children welfare Act and certain sections of the Workmen Compensation Act.

All the other labour laws stand suspended for 1000 days (one thousand days). Laws pertaining to trade unions, contract workers, industrial disputes, occupational safety, health and working conditions of workers have been put on hold.

The Minimum Wages Act, the Equal Remuneration Act, the Trade Unions Act, the Industrial Employment (Standing Orders) Act, the Industrial Disputes Act, the Factories Act, the Contract Labour Act, the Inter-State Migrant Workmen Act, the Employees’ Provident Funds and Miscellaneous Provisions Act, the Employees’ State Insurance Act and the Unorganized Workers’ Social Security Act will remain suspended.

The proposed amendments in the labour laws will allow companies not to follow required safety standards related to the health, safety and working conditions of employees. New units set up in Madhya Pradesh will be exempted from the necessary provisions of cleanliness, disposal of waste, ventilation, lighting, drinking water, urinals, canteens, restrooms, crèches, working hours, wages during the leave period, and the need for the manager of the factory to send notice to authorities in case any worker contracts occupational diseases.

Warm regards,

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