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-Aakriti Raizada
Founder & Managing Editor

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Legal Media Group

February 2020 | Volume X | Issue X

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Legal Era aims to provide "in the trenches" editorial that gives Common Man, Law Students, Lawyers, Business Leaders and Corporate Managements a detailed outlook of the current legal scenario.

BUDGET 2020

Dear Friends,

The much anticipated Union Budget 2020-21 was tabled in the Lok Sabha on February 1, 2020 by **Union Finance Minister Nirmala Sitharaman**. Based on the premises of economic development, an aspirational India, and a caring society, the Budget promises to boost income and purchasing power while reviving the domestic economy which has slumped in recent times.

Significantly, the Budget introduces new income tax slabs for individuals. Accordingly, those earning between ₹5 lakh and ₹7.5 lakh per annum and between ₹7.5 lakh and ₹10 lakh per annum will be taxed at 10 and 15 per cent, respectively – down from the earlier 20 per cent. While those earning between ₹10 lakh and ₹12.5 lakh per annum and between ₹12.5 lakh and ₹15 lakh per annum will be taxed at 20 and 25 per cent, respectively – down from the earlier 30 per cent. These income tax rates are optional and available to those willing to forego some exemptions and deductions. The Budget does away with nearly 70 of the more than 100 income tax exemptions as well as dividend distribution tax (DDT). It raises bank depositors' insurance coverage to ₹5 lakh from the existing ₹1 lakh, and makes way for instant allotment of PAN on the basis of Adhaar.

The Budget allots ₹69,000 crore to the health sector, out of which ₹6,400 crore will be sanctioned to the Ayushman Bharat Yojana. It earmarks ₹99,300 crore for the education sector, with plans to soon reveal a new education policy. ₹1.7 lakh crore is assigned to transport infrastructure, with plans to develop 100 additional airports and 6,000km of highways in 12 lots by 2024. The Railways is allocated ₹70,000 crore, with plans for more TEJAS-type trains to connect iconic tourist destinations among others. The Budget sets aside ₹100 lakh crore for infrastructure over the next five years, while ₹1.6 lakh crore is allocated to agriculture and irrigation, and ₹1.23 lakh crore to rural development and Panchayat Raj.

Other pluses of the Budget include extending lower withholding tax rate to interest on various securities in respect of foreign investment, extending 15 per cent concessional rate of corporate tax to the power sector, increasing tax audit threshold to ₹5 crore in case of less than 5 per cent turnover, providing cooperative societies the option to be taxed at 22 per cent sans exemption, and providing more income tax benefits to startups. Further, ₹3.37 lakh crore is earmarked for defense; ₹8,000 crore over a period of five years for quantum technologies and their applications; ₹3,000 crore for the Skill India initiative; ₹12,300 crore for Swachh Bharat; ₹44 billion for clean air incentives in cities with a population of over 1 million; and ₹9,500 crore for senior citizens.

The Budget tries to balance the needs and expectations of all segments of the society. Coming to the February edition of ***Legal Era Magazine***, it features interesting reads on the Personal Data Protection Bill, Insolvency and Bankruptcy Code as a tool of recovery, advances in cyber law, and a summary of the Essar Steel judgment among others. We hope that you won't be able to put down the edition once you begin reading it.

For the rest, mark your diaries in March as we have two events lined up – the **Gennext Business and Law Congress 2020** on **March 6 & 7** followed by the **International Intellectual Property Conclave and Awards 2020** on March 26 and 27. We also plan to launch our 2nd coffee table book titled, **"Lawyers of the Decade 2019-2020"** on **March 7**. The book offers a sneak-peek into the journeys of some of the most distinguished names in the legal fraternity, making for a delectable addition to your personal library!

Aakriti Raizada
Founder & Managing Editor

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/AakritiRaizada
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Kindly share your opinions/feedback at info@legalera.in

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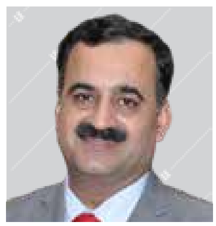

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READERS' NOTES BY THE PEOPLE FOR THE PEOPLE

Legal Era is one of the flagship legal magazines in Asia having a readership across the globe. The approach by which every edition is curated is not only highly professional and thoughtful but also reflects the intellectual skill & global outreach of the editorial team. The magazine has set a new benchmark in the industry and focuses on the industry trends and covers the vast arena of legal, commercial and economic updates

Manoj Kumar
Founder & Managing Partner
Hammurabi & Solomon

Legal Era magazine is an informative source of current events and commentary on complex legal issues of the day. An invaluable resource for today's practicing lawyer in any jurisdiction

Sai Pidatala, Senior Counsel, Seyfarth Shaw LLP

The ***Legal Era*** Magazine brings together the best of legal minds expressing their views and sharing experiences on the most burning issues. The publication provides good insights on successfully running and managing the legal business both from in-house and private practice perspective.

Salman Waris, Partner, Tech Legis Advocates & Solicitors

I have seen the growth of Legal Era over the years. It's now a top-class magazine which I eagerly wait to read and stay educated and informed.

Ajay Vaidya, Chief Legal and Compliance Officer,
Kotak Mahindra Capital Company Limited

Legal Era is of superior professional work, solid publication filled with informative pages supporting local stories and interesting editorials. Its events are probably the number one way to reach out to our community. Legal Era is my first choice for articles and events; I would encourage my peers to consider ***Legal Era.***

Saugata Chakravarty, General Counsel, Siemens Ltd.

The ***Legal Era*** magazine provides a wide range of legal issues, updates, recent developments and case summary which enhances the knowledge of the readers. It also focuses on national level (India) and international level (e.g. USA, Asia and UK) on various aspect of legal views that widens the perspective of those who reads it

Evelyne Yeung, Senior Associate, OLN Law

Reading Legal Era Magazine is a fantastic way of keeping oneself updated with the latest developments in the legal field. Its articles are scholarly and well written. Legal Era's conferences are not only great learning forums, but also present an excellent networking opportunity for the legal fraternity

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SC CLEARS DECKS FOR CONSTRUCTION OF MOPA AIRPORT IN GOA

The Supreme Court cleared the way for construction of a greenfield airport at Mopa in Goa subject to certain conditions suggested by the Expert Appraisal Committee (EAC). The Court directed the EAC to revisit its recommendations for the grant of Environmental Clearance (EC) including conditions and additional conditions to adequately protect the concerns governing the terrestrial eco-systems, besides formulating conditions pertaining to air, water, noise, land, biological and socio-economic environment.

The judgment comes after a year when the Supreme Court had suspended all construction activities for the greenfield project, ordering status quo in the case.

The Ministry of Environment, Forests and Climate Change (MoEFCC) moved the proceedings, seeking a direction that the Minutes of the 40th meeting of the EAC dated 23 April 2019 be taken on the record so that the embargo imposed by the Supreme Court on the Environmental Clearance for a greenfield airport at Mopa Goa can be lifted.

The EAC tabulated the details of forest areas which fell within a radial distance of 15 kilometers of the proposed airport and within the territories of the states of Goa and Maharashtra. The concerns highlighted were in relation to the need to preserve the biodiversity of the Western Ghats. A High Level Working Group (HLWG) on the Western Ghats chaired by Dr. K Kasturirangan constituted under the auspices of the MoEFCC sought to preserve the bio diversity of the Western Ghats.

On the existence of Ecologically Sensitive Areas (ESAs), the EAC noted that the Environmental Impact Assessment (EIA) report had only indicated that Pernem taluka, where the project is to come up, has not been earmarked as an ESA in the Kasturirangan Committee report.

The EAC also deliberated on the likely impact of the construction and operation of an airport on the flora, fauna and hydrological systems in the ESAs as well as in regard to climatic variations.

The EAC mentioned in its minutes that all the ESAs are far away from the project and therefore the impact on air and noise environment is expected to be minimal. It also mentioned in its minutes that, "With regards to climatic variations, the EAC felt that additional initiatives such as Green Infrastructure Development program, adoption of low emission intensive technologies, renewable energy program, and Airport Carbon Accreditation need to be adopted to reduce the impact on Green House Gas (GHG) emissions and thereby climate change."

Summing up its analysis, the EAC also held that as against 54,176 trees, which have been felled on the project site based on earlier approvals given by competent authority,

the project proponent is proposing to plant 5,50,000 trees (50,000 trees at the project site, 2,50,000 trees in the nearby villages supervised by the Biodiversity Board and 2,50,000 trees) under the supervision of DGCA.

Accordingly, the EAC recommended the grant of an EC to the project with additional environmental safeguards and conditions.

GMR Goa International Airport Limited committed to fulfill the objective of making the proposed greenfield airport at Mopa Goa, a zero carbon airport operation. The purpose of a zero carbon airport operation is to eliminate anthropogenic carbon emissions reaching the atmosphere completely or to the minimum extent possible from airport activities performed during its operation.

The Court observed, "The Court highlighted numerous concerns including the preservation of forests, the existence of ESAs with their attendant features and the impact of the proposed project on natural water channels. The Court also noted the abject failure of the project proponent to provide complete information on the existence of reserved forests.

In the proceedings that followed, the judgment of this Court, the project proponent sought to remedy its failure by taking into account additional information on significant aspects of the environment. In the process leading to the grant of the EC as well as the lifting of its suspension by this Court, numerous mitigatory conditions have been imposed on the project proponent. We deem it appropriate to ensure the oversight of the project by a specialized body to ensure compliance with the directions cumulatively issued by this Court."

The Apex Court directed the National Environmental Engineering Research Institute (NEERI) to be appointed to oversee compliance with the directions issued by the Court.

Justices Dr. Dhananjaya Y Chandrachud and Hemant Gupta presided over the case.

THE STATE CANNOT BE PERMITTED TO PERFECT ITS TITLE OVER LAND BY INVOKING THE DOCTRINE OF ADVERSE POSSESSION: SC

Justice Indu Malhotra Justice Ajay Rastogi

A Supreme Court bench of Justices Indu Malhotra and Ajay Rastogi came down heavily on the State of Himachal Pradesh stating that, "To forcibly dispossess a person of his private property, without following due process of law, would be violative of a human right, as also the constitutional right under Article 300A of the Constitution."

The Supreme Court gave relief to an eighty-year-old Appellant who was illiterate and was wholly unaware of her rights and entitlements under the law.

The facts date back to 1967-68, when the State of Himachal Pradesh (Respondent) took over the land of the Appellant for the construction of a major District Road. The acquisition was done without taking recourse to acquisition proceedings, or following due process of law.

In 2004, some similarly situated persons whose lands had also been taken over by the Respondent–State for the same public purpose filed a writ petition before the High Court of Himachal Pradesh claiming compensation.

The High Court of Himachal Pradesh ordered the State to acquire the lands of the Writ Petitioners under the Land Acquisition Act, 1894 (LA Act) and provided compensation to them.

On knowing this, the Appellant approached the High Court in 2010 and sought compensation under the LA Act or, in the alternative, directed the State to initiate acquisition proceedings under the LA Act.

The State argued that it had been in possession of the said land for the past 42 years and therefore the title of the State got converted into "adverse possession". Further, the State argued that the land was utilized by the Respondent–State only after the Appellant and her predecessors-in-interest verbally consented to the land being taken over without any objection. The Respondent submitted that the Appellant should avail of statutory remedy by filing a Civil Suit.

The High Court in 2013 held that the matter involved disputed questions of law and facts for determination on the starting point of limitation, which could not be adjudicated in Writ proceedings. The Appellant was granted liberty to file a Civil Suit.

The Appellant, aggrieved by the order of the High Court, approached the Supreme Court.

The Apex Court observed that the right to property is a Constitutional right under Article 300A of the Constitution. Article 300A provides that no person shall be deprived of his property save by authority of law. The State cannot dispossess a citizen of his property except in accordance with the procedure established by law. The Court also held that to forcibly dispossess a person of his private property, without following due process of law, would be violative of a human right. The obligation to pay compensation can be inferred in Article 300A, though not expressly included.

According to the Court, the Appellant could not have been forcibly dispossessed of her property without any legal sanction, and without following due process of law, and depriving her payment of just compensation – on the date of forcible dispossession in 1967 – which is her fundamental right.

The Court held that "In a democratic polity governed by the rule of law, the State could not have deprived a citizen of their property without the sanction of law. The State being a welfare State governed by the rule of law cannot arrogate a status beyond what is provided by the Constitution."

The Court was surprised by the plea of the State that it has been in continuous possession of the land for over 42 years, and therefore it amounts to "adverse" possession. Delay and laches cannot be raised in a case of a continuing cause of action, or if the circumstances shock the judicial conscience of the Court.

The Court was of the opinion that condonation of delay is a matter of judicial discretion, which must be exercised judiciously and reasonably from the facts and circumstances of a case. It will depend upon the breach of fundamental rights, and the remedy claimed, and when and how the delay arose. Period of limitation cannot be prescribed for the Courts when they are duty bound to exercise their constitutional jurisdiction to do substantial justice.

The Court concluded that the Appellant had been divested of her right to property without being paid any compensation for over half a century.

The cause of action in the present case is a continuing one, since the Appellant was compulsorily expropriated of her property in 1967 without legal sanction or following due process of law. The demand for justice is so compelling, since the State has admitted that the land was taken over without initiating acquisition proceedings, or any procedure known to law.

The Court exercised its extraordinary jurisdiction under Articles 136 and 142 of the Constitution, and directed the State to pay compensation to the Appellant.

VIOLATION OF LAW DOES NOT BY ITSELF LEAD TO CONTRIBUTORY NEGLIGENCE IN MOTOR ACCIDENT CASES: SC

A youth who was riding pillion on a motorcycle with two other persons died in a motor accident after being hit by a car from behind. The Motor Accident Claims Tribunal found that the accident was caused due to rash and negligent driving of the car and awarded an amount of ₹1,166,800 as total compensation payable to the victim's parents (appellants). The Insurance Company filed a statutory appeal under Section 173 of the Motor Vehicles Act, 1988 ("Act") appealing that primarily the deceased was guilty of contributory negligence inasmuch as he was riding pillion on the motorcycle with two other persons.

The High Court held that the deceased was also guilty of contributory negligence, as he was riding a motorcycle with two other persons even though the motorcycle on which the deceased victim was riding was hit by the speeding car from behind. The High Court therefore concluded that an amount equivalent to 10% has to be deducted towards contributory negligence. Aggrieved by this drastic reduction in the quantum of compensation, the claimants approached the Supreme Court.

A Bench of Supreme Court Justices N.V. Ramana and V. Ramasubramanian held that, "It is in such cases, where, but for the violation of the law, either the accident could have been averted or the impact could have been minimized, that the principle of contributory negligence could be invoked."

The Apex Court went on to hold that the fact that a person was a pillion rider on a motorcycle along with the driver and one more person on the pillion would make him guilty of being a party to the violation of the law. Section 128 of the Motor Vehicles Act, 1988, imposes a restriction on

Justice N.V. Ramana   Justice V. Ramasubramanian

the driver of a two-wheeled motorcycle, not to carry more than one person on the motorcycle. Section 194C of the Act prescribes a penalty for violation of safety measures for motorcycle drivers and pillion riders. But such violation by itself, without anything more, cannot lead to a finding of contributory negligence, unless it is established that his very act of riding along with two others, contributed either to the accident or to the impact of the accident upon the victim. A causal connection between the violation and the accident or a causal connection between the violation and the impact of the accident upon the victim must be established in order to find him guilty of contributory negligence. The Court thus concluded that in the absence of any evidence to show that the wrongful act on the part of the deceased victim contributed either to the accident or to the nature of the injuries sustained, the victim could not have been held guilty of contributory negligence.

The Supreme Court overturned the High Court's decision to reduce the compensation by 10% towards contributory negligence stating that it is unjustified and therefore set aside. The award of the Tribunal was restored.

AIRLINES ARE NOT UNDER OBLIGATION TO ESCORT EVERY PASSENGER UP TO THE BOARDING GATE: SC

The Supreme Court ruled that there is no contractual obligation on the airlines to escort every passenger, after the boarding pass is issued to him at the check-in counter, up to the boarding gate. Further, the Airlines issuing boarding passes cannot be made liable for the misdeeds, inaction or so to say misunderstanding caused to the passengers, until assistance is sought from the groundstaff of the airlines at the airport well in time. Once the boarding pass is issued, the passenger is expected to proceed towards security channel area and head towards specified boarding gate on his own.

The Supreme Court was hearing an appeal by Indigo Airlines (Appellants) against the order passed by the National Consumer Disputes Redressal Commission, New Delhi (National Commission) after it had ordered the airlines to pay compensation to two passengers (Respondents) who had missed their flight from Kolkata to Agartala operated by the Appellant-Airlines.

The Respondents blamed the Airlines for having missed their flight and sought compensation for the same. The State Commission had observed that after issuing boarding passes, it is the obligation of the airlines to provide assistance to the passengers to facilitate them to board the flight before the boarding gate closes. Aggrieved by this decision, the Airlines approached the National Commission, which affirmed the findings of the State Commission.

The Airlines appealed to the Supreme Court.

Read more: https://www.legaleraonline.com/news/airlines-are-not-under-obligation-to-escort-every-passenger-up-to-the-boarding-gate-sc

CREATING SUB-TENANCY IN PART OF THE PREMISES, CONFERS ON LANDLORD RIGHT OF EVICTION FROM WHOLE PREMISES: SC

A Supreme Court bench of Justices Sanjay Kishan Kaul and K.M. Joseph ruled that landlords are entitled to a decree of eviction for the entire premises, (tenanted premises), on the grounds of the tenants having sub-let a part of the premises.

The Court held that a bare reading of sub-para (i) of sub-section (4) of Section 11 of the Kerala Buildings (Lease and Rent Control), Act, 1965 ("Act") leaves no manner of doubt that the cause arises upon the tenant transferring his rights under a lease and sub-lets the entire building "or any portion thereof", if the lease does not confer on him any right to do so.

The Court relied on M. Meeramytheen & Ors. v. K. Parameswaran Pillai & Ors and held that the judgment covers the legal principle from all perspectives. A bare reading of sub-para (i) of Section 11 (4) of the Act leaves no manner of doubt that the cause arises upon the tenant transferring his rights under a lease and sub-lets the entire building "or any portion thereof", if the lease does not confer on him any right to do so.

The proviso requires that the landlord should have sent a registered notice to the tenant intimating the contravention of the said condition of the lease and upon the tenant failing to terminate the transfer or the sub-lease, as the case may be, within thirty (30) days of the receipt of the notice, an application for eviction could be made by the landlord. Thus, sub-letting of any part of the tenanted premises gives right to eviction from the whole premises.

Justice Sanjay Kishan   Justice K.M. Joseph

The Court ruled that although the appellants (landlords) have not specifically claimed that by sub-letting a portion, the whole premises is liable to be vacated, but then that is the legal consequence as is emerging from the legal position. The Supreme Court thus allowed the appeal and held that the appellants are entitled to a decree of eviction for the entire premises. The respondents were granted six months' time to vacate the premises.

GUJARAT PUBLIC WORKS CONTRACT DISPUTES ARBITRATION TRIBUNAL HAS JURISDICTION TO MAKE INTERIM ORDERS UNDER SECTION 17 OF THE ARBITRATION AND CONCILIATION ACT: SC

In this case, the question before the Supreme Court of India was whether the Gujarat Public Works Contract Disputes Arbitration Tribunal constituted under Section 3 of the Gujarat Public Works Contracts Disputes Arbitration Tribunal Act, 1992 (Gujarat Act) has jurisdiction to make interim orders in terms of Section 17 of the Arbitration and Conciliation Act, 1996 (A&C Act).

The Supreme Court comprising Justices Deepak Gupta and Aniruddha Bose answered in the affirmative.

The issue was in relation to the state of Gujarat withholding the amount payable to the respondent-contractor who was awarded a contract for strengthening a section of the National Highway in the State. The State was of the opinion that since the work of the contractor was defective, the state had got the work done from another person at the risk of the contractor.

The Gujarat Public Works Contract Disputes Arbitration Tribunal (the Tribunal) ordered that it can only exercise jurisdiction, powers and authority conferred on it by or under the Gujarat Act of which it is a creation. The Tribunal further held that if the Gujarat Act does not empower the Tribunal to grant injunction, it cannot take recourse to the Code of Civil Procedure, 1908 for grant of interim relief. It also held that an order of interim injunction, as prayed for like in the present case, does not fall within the ambit of 'interim award'. The Tribunal held that there is no power to grant such injunction. The Apex Court held that Section 9 of the A&C Act empowers the Court to grant interim measures. However, Section 9(3) clearly provides that once an Arbitral Tribunal is constituted, the Court shall not entertain an application under Section 9(1) unless the Court comes to the conclusion that such circumstances exist which would make the remedy under Section 17 not efficacious.

The Court ruled that insofar as the powers vested in the Arbitral Tribunal in terms of Section 17 of the A&C Act are concerned, such powers can be exercised by the Tribunal constituted under the Gujarat Act because there is no inconsistency in these two Acts as far as the grant of interim relief is concerned.

Read more: https://www.legaleraonline.com/news/gujarat-public-works-contract-disputes-arbitration-tribunal-has-jurisdiction-to-make-interim-orders-under-section-17-of-the-arbitration-and-conciliation-act-sc

Bombay High Court

SOCIAL MEDIA INFLUENCERS CANNOT ABUSE FREEDOM OF SPEECH BY MALIGNING STATEMENTS: BOMBAY HC

The Bombay High Court gave a ruling against a "YouTuber" / "V-Blogger" and held that under the garb of educating/ bringing the true facts to the public, no one should provide misleading information which disparages/discredits or belittles someone else's product or influences consumers not to buy the said product.

The Court went on to hold that freedom of speech and expression is not an unfettered right. The fundamental right of Freedom of Speech and Expression under Article 19 of the Indian Constitution cannot be abused by any individual by making maligning or disparaging statements.

The Defendant is a "YouTuber"/"V-Blogger" and has a YouTube channel titled "Bearded Chokra" on the website www.youtube.com. On the channel, the Defendant produces and uploads videos wherein he reviews products of various manufacturers.

In September 2018, he published a video titled "Is Parachute Coconut Oil 100% Pure?" wherein he reviewed PARACHUTE coconut oil (manufactured by Marico Ltd. – Plaintiffs).

In the video he claimed to have undertaken a 'Freeze Test' on the basis of which he concluded that the Plaintiff's PARACHUTE COCONUT OIL is of an inferior quality. By his acts he dissuaded his followers on YouTube from purchasing the product.

The counsel for the Plaintiffs contended that if the Defendant intended to create an educational video with the consumers' interest in mind and to bust the tricks used by companies to fool consumers, the Defendant should have approached any independent laboratory to conduct tests and give verified results to the consumers instead of the 'Freeze Test'.

It was further contended that the alleged test conducted by the Defendant is a wrong test and the comparison is a wrong comparison.

The Plaintiffs alleged that the Defendant's actions constituted disparagement, slander of goods, and malicious falsehood.

The Bombay High Court held that Social Media Influencers who have acquired a considerable follower base on social media along with a degree of credibility in their respective space have a magnified and profound impact on their audience. These influencers often employ the goodwill they enjoy amongst their followers / viewers to promote a brand, support a cause or persuade them to do or omit doing an act.

Justice S. J. Kathawalla observed that, "Today, social media influencing is one of the most impactful and effective ways of marketing and advertising. A social media influencer who has or claims to have a sound knowledge on what they claim their niche is, and uses that knowledge to influence people in believing and subscribing to the same set of ideas or thoughts they are trying to propagate on social media, have the power to influence people, to change attitudes and mindset.

In today's time, when people from all over the world are harnessing the potential of social media influencing, there is a need to understand what these responsibilities are and why they matter so much. Social Media Influencers do have a responsibility to ensure what they are publishing is not harmful or offensive."

The Court held that if the law of disparagement is not made applicable to the Defendant and if it is made applicable only to the manufacturers or traders, it would create havoc since all the manufacturers or traders would then hire people like the present Defendant to make disparaging statements about their competitor's products under the garb of making a "review" and thereby cause serious damage to competitors who would be left remediless.

The High Court ordered the Defendant to cease and desist from publishing or in any manner communicating the Impugned Video to the public and calling upon him to remove the Impugned Video from social media sites including his YouTube channel.

Tribunal

ARBITRATION TRIBUNAL RESTRAINS BIDVEST FROM SELLING STAKE IN MUMBAI AIRPORT TO ADANIS

In a major setback to the Adani Group which wanted to buy a stake in the Mumbai International Airport Limited (MIAL), an Arbitration Tribunal has restrained South Africa's Bidvest Group from transferring its stake in the MIAL to a third party. The tribunal has asked Bidvest to maintain status quo on its stake.

The Gautam Adani-led conglomerate had offered to buy Bidvest's stake in MIAL at ₹77 per share for around ₹1,200 crore. The tribunal comprising retired Justices KPS Radhakrishnan, AK Patanaik and Madan B Lokur asked GVK to pay interest to Bidvest Services on the agreed share purchase amount till the pendency of the issue.

The Adanis have already won bids to run six Airport Authority-built non-metro airports in the cities of Lucknow, Jaipur, Guwahati, Ahmedabad, Thiruvananthapuram and Mangalore. However, the bid to enter the country's second busiest airport by buying out Bid Services Division Mauritius (Bidvest) from MIAL was hindered after GVK chose to exercise its first right of refusal, and matched the ₹1,248-crore offer that the Adanis made to Bidvest in March 2019. GVK Group has maintained that it is willing to pay Bidvest the same price it has been offered by Adani Group (₹77 per share) but needs time.

The GVK Group had been desperately trying to ensure that Bidvest does not sell its stake to a third party. The stake in the airport business is vital for GVK Group, whose airport business revenue of around ₹3,700 crore, comes largely from the Mumbai Airport and accounts for a major share of the revenue of its listed entity, GVK Power & Infrastructure.

GVK Group owns 50.5% in MIAL, the Airports Authority of India holds 26%, Bidvest owns 13.5% and the remaining 10% by ACSA Global (Airports Company of South Africa). Once GVK Group purchases the stake from Bidvest, the shareholding of the GVK Group in MIAL would increase from 50.5% to 64%.

In June 2019, GVK had moved the Delhi High Court seeking an injunction against Bidvest from offering or selling its shares to any third party other than GVK. Though the Delhi High Court had dismissed the petition noting that the company had not shown its willingness to complete the deal, a division bench later sent the dispute for arbitration.

NGT

NGT PENALIZES RELIANCE JIO FOR ILLEGAL FELLING OF TREES

The National Green Tribunal (NGT) has penalized Reliance Jio with a fine of ₹10 lakhs for illegal felling of trees for laying underground Optic Fibre line from Nannoor to Veldurthy village in Andhra Pradesh.

The Divisional Forest Officer (DFO), Kurnool had issued a show-cause notice to Reliance Jio in connection with the felling of 125 avenue trees in Kurnool District for laying Optical Fibre Cable. Reliance Jio replied to the show-cause notice stating that the allegations in the show-cause notice were incorrect and further sought to set aside the ex-parte orders.

The DFO was not satisfied with the reply given by Reliance Jio and imposed a penalty of ₹2,09,825/- on Reliance Jio for the illegal cutting of trees. As per the proceedings, M/s Laxmi Constructions (engaged by M/s Reliance Jio Company) remitted an amount of ₹2,09,825/- to the Government Head of Account.

Additionally, an offense was registered against M/s. Laxmi Constructions for damaging 125 Avenue trees under section 28 (5) of A.P Water Land and Trees Act, 2002 and Rules 4 & 5 of Andhra Pradesh (Protection of Trees and Timber in Public Premises) Rules, 1989.

Considering the magnitude of the violations, the NGT enhanced the penalty to ₹10 lakhs. The NGT added that the amount be deposited by Reliance Jio within one month and may be spent by the Forest Department for restoration of the area.

NGT

NGT ASKS MOEF TO BAN RO PURIFIERS IN TWO MONTHS

A Non Governmental Organization (NGO) seeking conservation of potable water by preventing its wastage on account of unnecessary use of RO systems moved the National Green Tribunal (NGT). The NGT directed the Ministry of Environment and Forests (MoEF) on January 15, 2020 to issue a notification banning RO purifiers, within two months, where total dissolved solids (TDS) in water are below 500 milligrams per liter. The MoEF had sought four months for executing the order of the National Green Tribunal.

NGT Chairperson Justice Adarsh Kumar Goel said that the delay in compliance with its order would cause harm to public health and the environment and that the order be complied with expeditiously. The NGT sought to regulate the use of RO purifiers and therefore directed the government to prohibit them where total dissolved solids (TDS) in water are below 500 mg per liter and make the public conscious about the ill-effects of demineralized water. The NGT also asked the government to make it mandatory to recover more than 60% water wherever the RO is permitted across the country.

An expert committee submitted a report stating that where TDS is less than 500 milligrams per liter, the RO system will not be useful but will end up removing important minerals as well as cause undue wastage of water.

Reverse Osmosis (RO) is a water treatment process that removes contaminants from water by using pressure to force molecules through a semi-permeable membrane.

TDS is made up of inorganic salts as well as small amounts of organic matter. As per a World Health Organization (WHO) study, TDS levels below 300 mg per liter are considered to be excellent, while 900 mg per liter is said to be poor and above 1200 mg is unacceptable.

CCI

GLOBAL M&A IN INDIA MAY SOON REQUIRE CCI CLEARANCE

Global mergers and acquisitions (M&As) among technology giants that could concern the competition landscape in India may soon require clearance from the Competition Commission of India (CCI). According to CCI Chairman Ashok Kumar Gupta, the Government is expected to insert an enabling provision in the Competition Act to provide for such mega mergers based on the advise of an expert panel that reviewed the law last year. The change will incorporate deal size, which is currently not among the criteria for vetting global M&A deals with relevance to the Indian market, in CCI's merger regulations. The change will bring mega deals such as the 2014 acquisition of WhatsApp by Facebook within the ambit of CCI.

At present, the asset size and revenue in an M&A are the only criteria for competition scrutiny. This has proved to be inadequate as new-age technology companies have huge valuations, but their assets and turnover in India keep them out of the purview of local competition law. Their valuations partly hinder their access to customer base and data, India being a huge market for them.

Also, policymakers believe that digital economy firms' focus in the initial years to grow customer size may mean their sales may not meet the criteria for seeking CCI clearance. Facebook's $19 billion acquisition of WhatsApp escaped CCI assessment. A deal's impact on competition is assessed on several factors including a reduction in the number of players in the market and the entry barriers created for new players. The CCI Chairman explained that in the case of global transactions among digital economy firms, their nexus with the Indian market has to be established in order to assess whether their M&As might impact competition in the Indian market. Whenever global transactions are referred to national competition authorities, the CCI might suggest certain parts of the transactions to be modified if competition in the local market is adversely affected.

The proposed change will impact transactions involving domestic digital e-commerce firms, including taxi aggregators and e-commerce companies, which may command huge valuation because of their unique business models or access to user base. For instance acquisition of Myntra by Flipkart and TaxiForSure by Ola come under the digital economy space. Such acquisitions might require CCI clearance in the future.

Even if the asset or turnover of the combined entity is below the threshold specified in the law, if their deal size is above a certain threshold, which is to be decided after deliberations, they may have to refer the case to CCI. Individual firms involved in M&As have to seek CCI clearance now if their combined assets in India are worth over ₹1,000 crore or their revenue is over ₹3,000 crore. Deals involving firms having combined global assets of $500 million or sales of $1500 million require CCI's approval if they have assets worth at least ₹500 crore or sales worth ₹1,500 crore in India.

Calcutta High Court

CIRP CANNOT BE USED TO DEFEAT A CLAIM EXISTING PRIOR TO INSOLVENCY PROCEEDINGS: CALCUTTA HC

The petitioner (Corporate Debtor) approached the Calcutta High Court for setting aside of an Arbitration Award passed in 2008 contending that the application under Section 34 of The Arbitration and Conciliation Act, 1996 (the 1996 Act) cannot be proceeded with since Corporate Insolvency proceedings under the Insolvency and Bankruptcy Code, 2016 (the IBC) have been initiated against the petitioner (as the Corporate Debtor).

The Management of the corporate debtor/petitioner was taken over by JK Paper Limited – the Resolution Applicant before the National Company Law Tribunal (NCLT).

1. An Arbitrator was appointed in March 2006 and an arbitral Award was delivered in July 2008 for a sum of ₹3,21,927.70 at 9% per annum in favor of the respondent/claimant.
2. The present application for setting aside of the Award was filed in October 2008.
3. Operational Creditors initiated proceedings under the IBC against the petitioner (Corporate Debtor) in September 2017.
4. The adjudicating authority declared that the moratorium order under Section 14 shall cease to have effect.
5. An application under Section 34 of the 1996 Act for setting aside of the Arbitral Award was taken up for hearing by Calcutta High Court in December 2019.

The petitioner submitted that the present application for setting aside of the Award cannot continue since the respondent has not taken steps to include its claim before the Resolution Professional (RP).

The award-holder (respondent before the High Court) sought to proceed with the present application for setting aside of the Award while the petitioner/Award debtor (also the corporate debtor before the NCLT) sought to take recourse to the insolvency proceedings by contending that the respondent must first file its claim before the NCLT before it can contest the proceedings for setting aside of the Award.

The question that arose before the Calcutta High Court was whether the present application under Section 34 of the 1996 Act should be kept in abeyance by reason of the provision of IBC being invoked by operational creditors against the petitioner.

The High Court held that the Arbitral Award delivered in July 2008 was in existence for nine years prior to initiation of proceedings against the petitioner under the IBC in 2017. The challenge to the Award additionally made the "debt" uncertain and subject to the adjudication of the Section 34 proceedings (under the 1996 Act). The question of the respondent approaching the NCLT for filing a claim in 2017 at the time of initiation of the insolvency proceedings, could not, therefore, arise.

The Court held that this is a case wherein the award-holder sought to go on with Section 34 application while the award debtor (petitioner) took the plea of the proceedings before the NCLT.

Justice Moushumi Bhattacharya held that corporate insolvency resolution proceedings (CIRP) cannot be used to defeat a claim or a dispute which existed prior to the initiation of the insolvency proceedings.

The Court rejected the contentions of the petitioner that the challenge to the Award cannot be considered by reason of the proceedings under the IBC on the grounds that the respondent award-holder could not have filed a claim before the NCLT/IRP since the Section 34 proceedings had not been decided in favor of the said respondent in 2017 and hence there was no final or adjudicated claim as on that date.

"Further, once the stage under Section 14 of the IBC, namely, moratorium with regard to continuation of pending proceedings against the Corporate Debtor has been declared to be over, no further embargo remains for continuing to hear suits and other proceedings to which the Corporate Debtor (petitioner) is a party."

The Court concluded that Section 14(a) of the IBC contemplates suits or continuation of pending proceedings "against" the Corporate Debtor. In this case, the petitioner being the Corporate Debtor/Award Debtor cannot be permitted to take refuge under the provisions of the IBC for relegating the claim of the respondent award-holder to uncertainty for an indefinite period of time on the fallacious plea of the respondent not having gone before the NCLT.

United States of America

VOLVO CARS WIN TRADEMARK INFRINGEMENT CASE AGAINST CHINESE COUNTERFEITERS

Volvo Cars won a trademark infringement case in a federal court in Virginia against dozens of Chinese counterfeiters that have sold billions of dollars worth fake and inferior car parts over the internet. Volvo opened its only U.S. manufacturing plant off Interstate 26 near Ridgeville in 2018 and obtained a default judgment against the counterfeiters in a federal court in Virginia.

The court documents showed that the counterfeiters created numerous accounts on shopping websites such as eBay and Amazon to sell parts with Volvo logos, making it appear as if the parts were original equipments from the automaker. The sellers accepted payments only through the Paypal money transfer website and shipped the parts by mail.

Volvo claimed that the sellers' websites attract tens of millions of visitors a year who spend billions annually on fake parts for Volvos and other car brands, most of them made in China. The automaker in its complaint asserted that these sites are also estimated to contribute to tens of thousands of lost jobs for legitimate businesses and broader economic damages, such as lost tax revenue, every year. The addresses of the sellers couldn't be determined as they used the internet to conceal their identities, Volvo said. Volvo served the counterfeiters with court papers through the email addresses they had registered with Paypal.

Volvo obtained $2 million default judgments against 148 sellers. Judge Liam O'Grady ordered Paypal to transfer any money present in the sellers' accounts to Volvo and gave the automaker the right to seize funds from any new accounts opened by the sellers.

Volvo Cars filed the lawsuits along with Volvo Trademark Holding, which it co-owns with truck and bus maker Volvo AB. The trademark subsidiary is responsible for owning, safeguarding and protecting Volvo's brands and licensing the right to use those brands to companies.

Volvo is headquartered in Gothenburg, Sweden and is owned by China's Geely Holding Group.

FITBIT AND GARMIN ACCUSED OF VIOLATING WEARABLE DEVICE PATENTS

The United States International Trade Commission (USITC) voted to undertake an investigation of several companies including fitness tracking and smart watch manufacturers Fitbit and Garmin.

The USITC received a complaint in December from the North American and Dutch units of Philips alleging that the accused companies, including Fitbit and Garmin, committed violations of section 337 of the Tariff Act of 1930 in the importation into the United States and sale of certain wearable monitoring devices, systems, and components thereof that infringe patents asserted by the complainants.

The complainants requested the USITC to issue a limited exclusion order (sales ban) and cease and desist orders. The case will be handed over to one of the USITC's administrative law judges (ALJ). Allegedly, the patents used illegally by the defendants (Fitbit and Garmin) are related to motion tracking, activity tracking, alarm reporting, and other features. Fitbit, however, denies the allegations and said that the claims are without merit as a result of Philips' failure to succeed in the wearables market.

Philips' sole wearable device was its "Health Watch", which is no longer officially available for purchase from the company's website.

According to Philips, it had been in talks with Fitbit and Garmin to license intellectual property for over three years, but could not reach an agreement. In a statement, Philips stated that it expected third parties to respect Philips' intellectual property in the same way as Philips respects the intellectual property rights of third parties.

The USITC released a statement pointing out that it has not yet made any decision on the merits of the case and that it will make a final determination in the investigation at the earliest.

Read more: https://www.legaleraonline.com/news/fitbit-and-garmin-accused-of-violating-wearable-device-patents

United Kingdom

BREXIT: UK LEAVES THE EUROPEAN UNION

The European Union (EU) is an economic and political union involving 28 European countries. It allows free trade, which means goods can move between member countries without any checks or extra charges. The EU also allows free movement of people, to live and work in whichever country they choose. The UK joined in 1973 (when it was known as the European Economic Community) and is the first member state to withdraw.

The UK has officially left the European Union on 31st January 2020 after 47 years of membership - and more than three years after it voted to do so in a referendum. The UK has now entered an 11-month transition period.

The UK will leave all of the EU's political institutions and agencies. The UK would be following EU rules during the transition period. Additionally, the European Court of Justice will continue to have the final authority over legal disputes.

The UK Prime Minister or other British Ministers will have to receive special invitation in order to be able to join EU Council summits in the future. The UK would be able to start negotiating with other countries around the world about setting new rules for trading of goods and services. As an EU member, UK was not been allowed to hold formal trade negotiations with countries like the US and Australia. According to Brexit supporters, having the freedom to set its own trade policy will boost the UK's economy.

Approving on a UK-EU trade deal would be a top priority for UK, so that extra charges on goods and other trade barriers aren't levied when the transition ends. Also if any trade deals are reached, they won't be able to start until the transition period ends.

The team that handled the UK-EU negotiations and no-deal preparations has been disbanded on Brexit day. For the upcoming talks, the UK's negotiating team will be based in Downing Street.

Post Brexit, it would not be possible for some suspected criminals to be brought back to the UK if they escape to Germany because Germany's constitution does not allow its citizens to be extradited, unless it's to another EU country.

According to the UK Home Office, the European Arrest Warrant will continue to apply during the transition period. (Germany will be able to extradite non-German citizens during the 11-month period.) However, if a country's laws prevent extradition to the UK it "will be expected to take over the trial or sentence of the person concerned".

European Health Insurance Card (EHIC) – the cards that provide UK nationals with state-provided medical treatment in case of illness or accident, can be used in any EU country (as well as Switzerland, Norway, Iceland and Liechtenstein) and will continue to be valid during the transition period.

During the transition period, freedom of movement will continue to apply. UK nationals would be able to live and work in the EU as they did prior to Brexit. The same applies for EU nationals wanting to live and work in the UK.

As far as Pensions are concerned, UK nationals living in the EU will continue to receive their state pension and will also receive the annual increase. During the transition, the UK will continue to pay into the EU budget which means existing schemes, paid for by EU grants, will continue to be funded.

On the trade front, UK-EU trade will continue without any extra charges or checks being introduced.

United States of America

COMPETITORS SUE FACEBOOK, WANT ZUCKERBERG TO SELL MAJORITY STAKE

Describing Facebook as one of the largest monopolies in the United States, Facebook Inc. was sued by its competitors who accused the social media giant of anti-competitive behavior. The companies approached a Court seeking an order requiring Facebook Chief Executive Officer (CEO) Mark Zuckerberg to give up control of the social media behemoth.

The companies feared that if Facebook isn't forced to sell its WhatsApp and Instagram assets, it will integrate them into the social network. According to them, this would consolidate its market power across the globe, likely permanently foreclosing competition in the relevant markets for decades to come.

The lawsuit was filed on January 16, 2020 in San Francisco by Reveal Chat HoldCo LLC; USA Technology and Management Services Inc., better known as the credit and financial service provider Lenddol; former peer-to-peer site Cir.cl Inc.; and former identity verification provider Beehive Biometric Inc.

The aim of the lawsuit, according to the companies, was to halt the willful anti-competitive scheme. The

suing companies were of the opinion that getting Mark Zuckerberg to divest is essential to get Facebook to cease its anticompetitive behavior.

Both the Justice Department and the Federal Trade Commission, which share a mandate to enforce antitrust laws, have announced that they would review the technology sector broadly and also indicated that both the agencies would carry out an investigation on Facebook.

Read more: https://www.legaleraonline.com/news/competitors-sue-facebook-alleging-anti-competitive-behavior-want-zuckerberg-to-sell-majority-stake

United Kingdom

UK REGULATOR FORCES FACEBOOK, EBAY TO COMBAT FAKE REVIEWS

facebook

ebay

Facebook and eBay have committed to combat the trade of fake and misleading reviews on their sites, according to the United Kingdom's Competition and Markets Authority (CMA). Following action from the CMA, Facebook and eBay have signed up to agreements to better identify, investigate and respond to fake and misleading reviews which is a win for online shoppers, the UK regulator said in a statement. It further mentioned that fake reviews are harmful to shoppers and businesses alike.

"Millions of people base their shopping decisions on reviews, and if these are misleading or untrue, then shoppers could end up being misled into buying something that isn't right for them - leaving businesses who play by the rules missing out," said Andrea Coscelli, CMA Chief Executive.

More than three-quarters of people are influenced by reviews when they shop online, and billions are spent every year based on write-ups of products or services. "In response to the CMA highlighting its concerns about the trade of fake and misleading reviews in the summer, Facebook has removed 188 groups and disabled 24 user accounts, and eBay has permanently banned 140 users," said the authority. While Facebook has agreed to introduce more robust systems to detect and remove such content, eBay has improved its existing filters to better identify and block listings for the sale or trade of online reviews.

During a further sweep of relevant platforms, the CMA also highlighted new examples of fake and misleading reviews for sale via Instagram, and reported these to Facebook which operates Instagram. "Facebook has committed to investigate the issue", said the CMA. "The CMA is not alleging that Facebook or eBay are intentionally allowing this content to appear on their websites and is pleased that both companies have fully co-operated," said Coscelli.


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S&R ASSOCIATES ADVISE C&S ELECTRIC IN SALE OF SHARES TO SIEMENS

S&R Associates represented C&S Electric Limited, a leading manufacturer of electrical and electronic equipment and its promoter shareholders on the sale of approximately 99% of equity shares to Siemens Limited, a public listed company, for approximately ₹21 billion.

Siemens Ltd. has signed an agreement to acquire New Delhi-based C&S Electric Limited. The scope of the acquisition comprises the Indian operations of C&S Electric's low-voltage switchgear components and panels, low and medium voltage power busbars as well as protection and metering devices businesses.

C&S Electric Ltd. is amongst the leading suppliers of electrical equipment in India and is India's largest exporter of industrial switchgear. C&S Electric has more than 50 years of experience in India and will continue to operate under its own brand name.

The combination of the portfolios of the two companies will enhance Siemens position in the business, enabling it to better serve customers requiring electrification in areas including construction, industry, data centers, smart campuses and other city infrastructure.

The transaction is subject to closing conditions, including approval of the Competition Commission of India.

The S&R corporate team included partners Sanjeev Adlakha and Shivaji Bhattacharya and associates Tarinee Sudan, Meher Mehta, Neethu Roy, Addway Bandyopadhyay and Anurag Goswami. Simran Dhir, head of competition practice, and associates Dhruv Agarwal and Ishika Rout advised on competition law matters.

SINGH&SINGH | MALHOTRA&HEGDE ATTORNEYS ADVISE ON SPOTIFY – WARNER INDIA SAGA

Everyone is aware of India's most prestigious music licensing deal of 2020. The one between Warner Chappell Music (WCM) and Spotify which culminated in a treat for avid listeners in India.

In February last year, WCM filed a case in the Bombay High Court in seeking an injunction against Spotify for including music represented by WCM in its selection in India.

However, this litigation did not come in the way of Spotify's launch in February last year and the music platform was well received by the Indian masses. Simultaneously, both parties actively pursued this litigation.

It was only the second week of January 2020 when the tide turned and both parties approached a settlement and submitted to the court to get the pending litigation dismissed as they penned down a multi-million licensing deal.

For this, Vanditta Malhotra Hegde, Founding and Managing Partner of Singh&Singh | Malhotra&Hegde, advised and acted for Spotify and Anand & Anand & Khimani represented Warner Chappell in the litigation.

Warner Chappell Music, Inc. is an American music publishing company and a division of the Warner Music Group. Warner Chappell Music's catalogue consists of over one million compositions and 65,000 composers, with offices in over 40 countries. According to WCM, the new deal appropriately values its songwriters' music and expands its license partnership with Spotify to include India.

Spotify which was founded in 2006 is in the primary business of providing an audio streaming platform – the "Spotify" platform, that provides DRM (Digital rights management) protected music, videos and podcasts from record labels and media companies.

CYRIL AMARCHAND MANGALDAS ADVISES SOFTBANK ON INVESTMENT IN ONE97 COMMUNICATIONS LIMITED

India's largest full-service law firm Cyril Amarchand Mangaldas acted as legal counsel to Softbank Vision Fund on a primary investment of USD 200 million in the Series G funding round of One97 Communications Limited (One97). One97 raised USD 1 billion in this round, which also saw participation from Alibaba Group (Alipay and Ant Financial), T Rowe Price Associates, Inc. and Discovery Capital.

SoftBank Group Corp. is a Japanese multinational conglomerate holding company headquartered in Tokyo. It runs the Softbank Vision Fund, the world's largest technology-focused venture capital fund.

One97 delivers mobile content and commerce services to millions of mobile consumers through India's most widely deployed telecom applications cloud platform.

One97 is the parent company of Indian digital payments leader, Paytm. The payment platform is currently serving merchants in over 2000 towns and cities spanning 650 districts in India. With this investment, the company hopes to bring low-cost mobile enabled financial services to rural India.

The General Corporate, Financial Regulatory, Intellectual Property, Competition Law and Taxation Practices of Cyril Amarchand Mangaldas advised on the Transaction.

The Transaction team was led by Shishir Vayttaden, Partner; K. Aishwarya, Partner; with support from Surbhi Ajitsaria, Associate; and Meenakshi Ramkumar, Associate.

Shishir Vayttaden, Partner; K. Aishwarya, Partner; also advised on conducting diligence on the Company and its approximately 17 subsidiaries/affiliates, with support from Aayush Kumar, Senior Associate; Ayushi Sutaria, Senior Associate; Meghmala Singh, Consultant; Surbhi Ajitsaria, Associate; Meenakshi Ramkumar, Associate and Banashree Hazarika, Associate.

cyril amarchand mangaldas
advocates & solicitors

The Financial Regulatory Practice led by Garima Joshi, Partner; and Rohan Banerjee, Partner; with support from Sarthak Singhdeo, Associate assisted in diligence of certain financial services business.

The Intellectual Property team led by Ranjan Negi, Partner & Head – Intellectual Property; with support from Rekha Dabas, Director; Prashant Jha, Principal Associate; Pranav Taneja, Associate; Akshi Seem, Associate; Isha Malik, Associate assisted in undertaking an IP diligence.

The Competition Law team was led by Avaantika Kakkar, Partner; and Anshuman Sakle, Partner; with support from Aishwarya Gopalakrishnan, Principal Associate; Neelambera Sandeepan, Senior Associate; and Shubhankar Jain, Associate advised on competition law issues.

Arun Prabhu, Partner; assisted with aspects relating to diligence of online gaming business.

Mr. PK Bagga, Senior Consultant, advised from regulatory perspective. Bharath Reddy, Partner; assisted with review of ESOP related aspects. SR Patnaik, Partner & Head – Taxation assisted with certain tax related queries.

Other advisors involved in the Transaction include Morrison & Foerster LLP.

LINK LEGAL ILS CORPORATE PARTNER MANISH GUPTA TO JOIN INDUSLAW

LINK LEGAL
INDIA LAW SERVICES

Link Legal India Law Services corporate partner, Manish Gupta, is set to join IndusLaw in Delhi. Prior to joining Link Legal in 2015, he was working as a Managing Associate with Luthra & Luthra.

He was an overall fifth-ranked dealmaker in the 2018-19 in Legal 50 corporate dealmakers of the year list, having led on a total of 13 deals, worth $1.6bn.

In the financial year 2019-20, Manish had been involved in 12 deals with values of $915m so far, for corporates and clients.

Founded in 2000, IndusLaw has offices in Bengaluru, Delhi, Mumbai and Hyderabad.

Manish is a 2004 NLIU Bhopal graduate.

SAM & CO. PARTNER AND HEAD OF BANKING & FINANCE SAPAN GUPTA TO JOIN ARCELORMITTAL AS INDIA GC

Sapan Gupta – Partner at Shardul Amarchand Mangaldas (SAM & Co.) and the firm's National Head of Banking and Finance practice, is set to join ArcelorMittal as General Counsel, according to sources.

Sapan is one of the primary partners responsible for the insolvency and bankruptcy practice of the firm. As part of bankruptcy, he has been advising on matters like Essar Steel among others.

Before joining SAM & Co., Sapan was the Head of Legal-Corporate Finance, Transaction Banking and Capital Market, South Asia at Standard Chartered Bank. Previously he has also worked with Tata Group, ICICI Bank and HSBC in various positions.

Sapan has completed his LLB from the Faculty of Law, Delhi University. He received his LLM from Harvard Law School where he was a Tata Scholar. He also attended the London School of Economics as a Chevening Gurukul Scholar. He is qualified to practice law in India and the state of New York.

SINGH & ASSOCIATES HELPS WHHPPL WIN ₹750 CRORES ARBITRATION AWARD AGAINST NHAI

West Haryana Highways Projects Private Limited (WHHPPL) was awarded a Concession Agreement (CA) by NHAI on Design-Build-Finance-Operate-Transfer (DBFOT) Toll basis for widening of an existing two-lane highway and also constructions of two new bypasses.

Although WHHPPL substantially completed the work and Toll was started in 2014, NHAI did not declare completion of the project.

Consequently, WHHPPL suffered huge losses due to Project overrun. It was the case of WHHPPL that NHAI failed to adhere to the terms of CA in fulfilling its obligation of handing over of land, which was the first obligation in line for any construction of road.

The Arbitral Tribunal passed an Award in favor of WHHPPL inter alia holding NHAI was in breach of the CA. The Tribunal including interest allowed a sum of around ₹750 Crores in favor of WHHPPL.

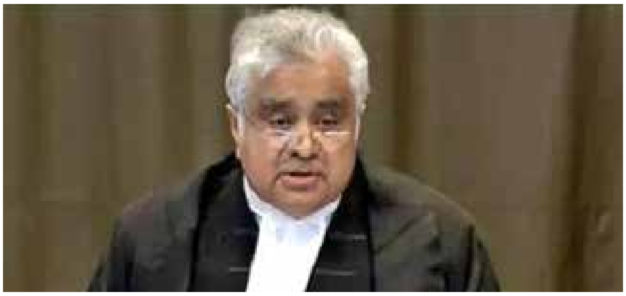
This Award of the Arbitral Tribunal was challenged by NHAI before the Hon'ble Delhi High Court, which was listed on January 7, 2020.

On the first date of hearing, while issuing notice based on the arguments of WHHPPL's Learned Counsel, Singh & Associates, the Hon'ble Court was pleased to direct NHAI to deposit the complete awarded amount with the Registrar within 4 weeks. The next date of hearing is May 4, 2020.

SINGH & ASSOCIATES
FOUNDER MANOJ K SINGH
ADVOCATES & SOLICITORS

This is another feather in Singh & Associates' credential, wherein on day one of hearing of objection under section 34 of the Arbitration and Conciliation Act, 1996, the Hon'ble Court has directed NHAI to deposit the complete awarded amount which is more than ₹750 Crores.

HARISH SALVE APPOINTED AS QUEEN'S COUNSEL



Senior Advocate Harish Salve would be "taking silk" after being appointed as the Queen's Counsel (QC) for the courts of England and Wales by the Ministry of Justice. The Silk Ceremony will be held on March 16, 2020.

The title of QC is awarded to those who have demonstrated particular skill and expertise in the conduct of advocacy. 114 new appointments as Queen's Counsel were announced on January 16, 2020. Salve has served as the Solicitor General of India from November 1999 to November 2002. As a law officer for the Union of India, Harish Salve conducted a large number of important matters like the first Anti-Dumping case in the Supreme Court of India and the first case of privatization of PSUs and many more. Salve has handled many high profile cases. He has also been appointed as Amicus Curiae by the Supreme Court in some cases.

In 2013, Salve was admitted to the English Bar and subsequently joined the Blackstone Chambers.

In May 2017, he represented India before the International Court of Justice in the Kulbhushan Jadhav case. Salve has completed his graduation in Commerce and LLB from Nagpur University. He began his career at J. B. Dadachandji & Co., initially as an intern, and later as a full-time lawyer.

CYRIL AMARCHAND MANGALDAS ACTED AS THE INDIA COUNSEL TO MASTERCARD IN RELATION TO ITS PROPOSED INVESTMENT IN PINE LABS

Cyril Amarchand Mangaldas acted as the India counsel to Mastercard, in relation to its proposed investment in Pine Labs. Pine Labs has two companies in India, namely, Pine Labs Private Limited and Qwikcilver Solutions Private Limited. Pine Labs is one of Asia's leading merchant commerce platforms. Its unique cloud-based platform enables it to offer a wide range of payment acceptance and merchant commerce solutions. Its stored value platform includes issuing, processing and distributing digital gift cards for corporate customers.

Mastercard is a technology company in the global payments industry. Together, the companies will offer a suite of value-added services, including Pine Labs' end-to-end stored value solutions which will replace the paper ones now widely used by companies, retailers and people in South Asia and many other markets. The M&A, Intellectual Property and Financial Regulatory Practices of Cyril Amarchand Mangaldas advised Mastercard on the transaction. The scope of work included undertaking due diligence, general corporate advisory and review and finalization of the transaction documents from an Indian law perspective.

The transaction team was led by Akila Agrawal, Partner & Head – Mergers & Acquisitions; Megha Bhargava, Partner; with support from Gunit Singh, Associate; Shree Sinha, Associate; and Astha Tambi, Associate. The Intellectual Property team was led by Ashwin Sapra, Partner; and Arun Prabhu, Partner; with support from Biplab Lenin, Principal Associate.

The Financial Regulatory team was led by Rohan Banerjee, Partner; with support from Rishi Ray, Associate. Other

advisors involved in the transaction included Dechert LLP (foreign legal counsel to Mastercard), J. Sagar Associates (Indian legal counsel to Mastercard for data protection related advisory) and IndusLaw (Legal counsel to Pine Labs). The Transaction was signed on 23 January, 2020.

About Cyril Amarchand Mangaldas

Cyril Amarchand Mangaldas takes forward the values going back 103 years, of the erstwhile Amarchand & Mangaldas & Suresh A. Shroff & Co., whose pre-eminence, experience and reputation of almost a century has been unparalleled in the Indian legal fraternity. Tracing its professional lineage to 1917, the Firm of Cyril Amarchand Mangaldas is now the largest full-service law firm in India, with over 750 lawyers including over 130 partners, and offices in India's key business centers at Mumbai, New Delhi, Bengaluru, Hyderabad, Chennai and Ahmedabad. The Firm advises a large, and varied client base that includes domestic and foreign commercial enterprises, financial institutions, private equity funds, venture capital funds, start-ups and governmental and regulatory bodies.

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- **Vyapak Desai**, Partner, Nishith Desai Associates
- **Zameer Nathani**, Senior Vice President and General Counsel, UFO Moviez India Limited
- **Zarina Pundole**, General Counsel, Shapoorji Pallonji EPC Division

And many more...

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BUDGET 2020

DISENFRANCHISEMENT OF THE INCOME TAX APPELLATE TRIBUNAL

The proposals clearly underscore the functioning of the Tribunal, in so far as exercise of its power to grant stay, and require to be revisited

Two amendments in the Finance Bill of 2020, though conjoint yet carrying distinctive implications, have caught the attention of the taxpayers and legal fraternity alike. They relate to the amendments proposed to Section 254 of the Income Tax Act, 1961 (IT Act). In this column, we seek to demystify the proposals and their rationale as well as the concerns arising out of these proposals.

Setting the context

Income Tax Appellate Tribunal ('the Tribunal'), an appellate forum, is the final fact-finding authority under the provisions of the IT Act. It is the oldest tribunal in India and its setup pre-dates independence. Its functioning, importance to the legal system, contribution to fiscal jurisprudence, etc. have been lavishly credited with congratulatory messages from eminent jurists, Supreme Court and legal luminaries like Late Nani Palkhivala.

Opining that the Tribunal had the necessary trappings of a judicial institution, the power to grant interim stay was inherent in the Tribunal. The Supreme Court in the *Mohammed Kunhi case*[1] permitted it to pass necessary order in the ends of justice, observing that express grant of statutory appellate power carries necessary implication including, the authority to use all reasonable means to make such grant effective. This power has subsequently been a subject of legislative intervention and refinement by successive amendments and the proposals in the Finance Bill, 2020 are an attempt to revisit such powers.

Enactments & Earlier amendments

Up until 1998, no time limit was prescribed for disposal of appeals by the Tribunal, which invariably resulted in delays. For making the ends of justice meet, Section 254(2A) was inserted to ensure accountability and timely disposal of appeal by providing a time period of 4 years from end of the financial year in which appeal was filed. Since the amendment, the functioning of the tribunals in so far as disposals are concerned did show a visible improvement, despite the 4-year limit being loosely worded. Up until 2007, the Tribunal exercised inherent powers, as directed by the Supreme Court to grant stay of demand. The rationale was to alleviate taxpayers' difficulty to pay up the demand until disposal of the appeal. Thereafter, provisos to section 254(2A) were subsequently added by Finance Act, 2007 which clearly stipulated that, in the first instance, a stay order could be passed for a period, not exceeding 180 days and the Tribunal was required to dispose the merits appeal within that period. The second proviso stipulated that in case the appeal was not so disposed within the 180 days period, the Tribunal on being satisfied that the delay was not attributable to the taxpayer, could extend such stay up to a maximum of 365 days. This meant that the Tribunal took upon itself, the responsibility to decide the merits appeal within a year. The 2007 amendments received judicial consideration.

[1] ITO v. M.K. Mohammed Kunhi [1969] 71 ITR 815 (SC).

Mukesh Butani

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ADVOCATES

The effect of these amendments as they then existed came up for consideration before the Bombay High Court in *Narang Overseas*[2] and it was held that the provisos did not exclude or negate the power of the Tribunal to grant relief beyond the period of 180 days. The intent of the Parliament was not to denude the Tribunal of its inherent power to continue the interim reliefs including relief by staying tax demand. The Bombay High Court opined that if it were to be held that the Tribunal, would have the power to pass an order in an appeal, but not have the power to continue the grant of interim relief for no fault of the taxpayer, that would be unreasonable or violative of fundamental rights under Article 14 of the Constitution. In other words, the Bombay High Court took the view that the Tribunal had the power to extend the stay beyond the period of 365 days, provided the delay in disposal of the appeal was not attributable to the taxpayer. The Bombay High Court was mindful that Courts are required to interpret the law consistent with the Constitutional mandate so as to avoid a provision being rendered unconstitutional. It is in this light that the Court read down and interpreted the law (prior to the 2008 amendment) that the Tribunal has an inherent power to extend the stay beyond 365 days.

As reaction to the High Court's interpretation, the law was amended by way of insertion of a third proviso vide Finance Act, 2008 which stipulated that if the appeal had not been disposed within 365 days, the order of stay will automatically stand vacated. The Bombay High Court in the case of *Jethmal Faujimal Soni*[3] interpreted the 2008 amendment holding that the Tribunal is under a bounden duty to ensure that the appeal is disposed of within 365 days, so as not to cause any prejudice to the taxpayer, particularly in a situation, where no fault could be found with the conduct of the taxpayer. Further, the Court opined that in view of the amendment, the Tribunal lost its power to grant stay beyond 365 days and only High Court, exercising its writ jurisdiction, could consider interim relief for stay of demand. This decision resulted in High Courts flooded with writ petitions for stay of demand beyond 365 days.

In a turn of events, the Delhi High Court in *Pepsi Foods*[2] quashed the 2008 amendment in a writ petition challenging its vires. The High Court opined that the amendment introduced by the Finance Act, 2008, which added the words *'even if delay in disposing of appeal is not attributable to assessee'* has to be struck down, being violative of Article 14 of the Constitution. This decision was subsequently upheld by the Supreme Court[5] and it could be very well said to be a law declared under Article 141 of the Constitution of India. Since this was a law declared by the Apex Court, tribunals started extending the stay beyond 365 days where delay in hearing the merits appeals was not attributable to the taxpayer.

> *More crucially, the proposals clearly underscore the functioning of the Tribunal, in so far as exercise of its power to grant stay and require to be revisited. Not only the tribunal's discretion is being taken away, it has been directed to function, with a dictate to collect 20% tax on disputed demand, even in deserving cases where taxpayers make out a prima facie case*

Proposals in Finance Bill, 2020

The Finance Bill, 2020 has proposed two amendments to Section 254 (2A) of the IT Act. These amendments are as under:

(a) in the first proviso, after the words "from the date of such order", the words *"subject to the condition that the assessee deposits not less than twenty per cent. of the amount of tax, interest, fee, penalty, or any other sum payable under the provisions of this Act, or furnishes security of equal amount in respect thereof"* shall be inserted;

(b) for the second proviso, the following proviso shall be substituted, namely:

"Provided further that no extension of stay shall be granted by the Appellate Tribunal, where such appeal is not so disposed of within the said period of stay as specified in the order of stay, unless the assessee makes an application and has complied with the condition referred to in the first proviso and the Appellate Tribunal is satisfied that the delay in disposing of the appeal is not attributable to the assessee, so however, that the aggregate of the period of stay originally allowed and the period of stay so extended shall not exceed three hundred and sixty-five days and the Appellate Tribunal shall dispose of the appeal within the period or periods of stay so extended or allowed".

The purport of the first proposal is that the Tribunal can grant stay but not completely and a minimum of 20% of the disputed tax, interest, penalty or other sums payable need to be paid by the taxpayer (or equivalent security) as a condition for grant of stay. In other words, the power of the Tribunal to grant stay is proposed to be circumscribed up to 80% of the tax demand.

[2] Narang Overseas (P.) Ltd. v. ITAT [2007] 295 ITR 22 (Bom). [3] Jethmal Faujimal Soni [2011] 333 ITR 96 (Bom). [4] Pepsi Foods Pvt Ltd v. ACIT [2015] 376 ITR 87 (Del). [5] [2017] 79 taxmann.com 251 (SC).

The second amendment appears to be a re-enactment of the provision struck-down earlier by the Bombay High Court as well as Delhi High Court, declared as violative of Article 14 of the Constitution. In addition, restrictions have been placed upon the powers of the Tribunal in so far as its power to grant of stay is considered.

Validity of the proposals

It is without doubt that, both as an intrinsic feature as also a concomitant of the judicial opinion, the power to grant a stay is not just incidental or ancillary to the appellate jurisdiction of the Tribunal, but also an inherent power. From the legal principles governing power to grant stay, which necessarily requires reference to (i) *prima facie case*, (ii) consideration of *balance of convenience,* and (iii) assessment of *irreparable loss* in event of refusal of stay, particularly financial hardship to taxpayers, it is clear that the power to grant stay, though discretionary, is well hinged with sufficient safeguards to avoid its abuse.

There are multifarious aspects emanating from decisions of the Supreme Court which govern the exercise of such power and wherefrom it is clear that the power of stay exercised by the Tribunal is not likely to be exercised in a routine way or as a matter of course in view of the special nature of taxation. The Tribunal is obliged to grant a conditional stay where the circumstances so warrant, besides an overwhelming mandate that such stays are granted only in deserving and appropriate cases where the Tribunal is satisfied that the entire purpose of the appeal will be frustrated or rendered nugatory by allowing the recovery proceedings to continue during the pendency of the appeal.

Besides the aforesaid, it is curious to note that the provision which was struck down as unconstitutional is proposed to be re-enacted. The decisions of the Bombay & Delhi High Courts relate to a perceived violation of fundamental rights under Article 14. The two dimensions of Article 14 in its application to fiscal legislation and for rendering a legislation invalid are: (i) discrimination, based on an impermissible or an invalid classification and (ii) excessive delegation of powers; conferment of uncanalised and unguided powers on the executive, whether in the form of delegated legislation or by way of conferment of authority to pass administrative orders. The Budget proposals in effect have amended the law and attempted to present the same outcome as it stood when it was inserted by the Finance Act, 2007.

More crucially, the proposals clearly underscore the functioning of the Tribunal, in so far as exercise of its power to grant stay and requires to be revisited. Not only the Tribunal's discretion is being taken away, it has been directed to function, with a dictate to collect 20% tax on disputed demand, even in deserving cases where taxpayer make out a prima facie case. The memorandum explaining the provisions in the Finance Bill has not given any cogent reasons or rationale other than stating the 'law as it stands' and the 'law as it should stand'. Instead, the head note states that the amendments issued clarify the powers of ITAT on stay of demand.

As a practitioner, I have no doubt that the amendment, if passed in the Parliament shall cause undue hardship and harassment to taxpayers who are unable to pay up to 20% of the disputed demand. Undoubtedly, taxpayers will rush to High Courts invoking Writ jurisdictions and thereby clogging the dispute resolution system. Given the larger message of the Modi Government for ease of doing business, and efforts to instill taxpayers' charter, this proposal should be re-examined before the passage of the bill.

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***Disclaimer** – The views expressed in this article are the personal views of the author and are purely informative in nature.*

IBC – REVIVAL OR RECOVERY?

Going by experience and data, it appears that the IBC, in the three years since its inception, has been more successful as a tool of recovery than revival

The Insolvency and Bankruptcy Code, 2016 ("IBC") with its advent instilled a hope in the industry, a hope of revival of stressed assets, a hope in the hearts of employees of stressed assets of reinstatement of their employment, a hope in the minds of the operational creditors (largely coming from the MSME sector) of continuity of business relations. IBC had instilled a hope that it would be a magic wand to meet all those objectives which could not till that date be met by legislations like the RDDBFI Act, SARFAESI Act, SICA and all those laws dealing with recoveries and stressed assets. It was thought that the lacunae of all these laws would be covered while meeting the objective of keeping a stressed asset as a going concern.

Dr. Sanjeev Gemawat

Executive Director (Legal) &
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Though since the time of its promulgation, IBC has been tested repeatedly on judicial parameters leading to multiple amendments, however, the time is now ripe to analyze whether it meets its objective of revival of stressed assets or has it become a tool for recovery of debts which were otherwise difficult to recover.

The Preamble of IBC lays down the objects to include "the insolvency resolution" in a time-bound manner for maximization of the value of assets in order to balance the interests of all stakeholders. As can be seen from the preamble, IBC rests on three pillars i.e. a) resolution in a time-bound manner; b) maximization of value; and c) balancing interest of all stakeholders.

However, IBC had some provisions which were antithetical to its very objectives. IBC brought paradigm shift from 'debtor in possession' to 'creditor in control' regime meaning thereby that stressed asset would be in control of creditors who would be more interested in recovery of their money rather than in revival of a stressed asset. IBC itself is not determining or laying down any parameters for determination whether a stressed asset had the potential to continue as 'going concern' or that it should be liquidated. Rather its destiny has been entrusted in the hands of financial creditors, whose interest in the practical sense revolves around recovery of their money and they have no other incentive to put the stressed assets as a going concern. It is also relevant to mention here that the duty of running the stressed asset has been cast upon the Committee of Creditors ("CoC") who may practically not have any experience of running business like that of the stressed asset thus putting the same at a further risk.

This view finds force from the latest Report in the Resolving Insolvency Index, India's ranking jumped 56 places to 52 in 2019 from 108 in 2018. Recovery rate increased from 26.5% in 2018 to 71.6% in 2019 and time taken in recovery improved from 4.3 years in 2018 to 1.6 years in 2019.

Since the coming into force of the provisions of IBC with effect from December 2016, 2542 Corporate Insolvency Resolution Processes ("CIRP") have commenced by the end of September 2019, of which 587 have ended in orders for liquidation and 156 have ended in approval of resolution plans.

It is seen that about 56.17% of the CIRP, which were closed, ended in liquidation, as compared to 14.93% ending with a resolution plan. The average time taken for completion of 156 CIRP, which have yielded resolution plans is 374 days; while the average time taken for completion of 587 CIRP, which have yielded orders for liquidation is 300 days.

Moving on to the issue of maximization of assets, it can be noted that IBC has utterly failed to meet the timelines provided therein, resulting in deterioration in the value of stressed assets. Howsoever, the legislation is not to be blamed alone as equal contributor to this failure is judicial innovation. IBC initially prescribed a time limit of 270 days for CIRP. The effect of these timelines was diluted when the same were held to be directory and not mandatory. By virtue of an amendment, the time limit was revised to 330 days including time spent in legal proceedings. However, this revised timeline is also being considered to be directory and not mandatory. We need to appreciate that delays of this kind would force a stressed asset into liquidation as with the passage of time, the value of the asset deteriorates. Further, while keeping in view "maximization", creditors see the value of the asset, vis-à-vis revival or liquidation, which it can fetch on the date of approval by CoC and lose sight of future potential which an asset may have in terms of revival and generating opportunities in terms of business, employment, revenue generation etc. The CoC which can revive the stressed asset inter-alia by restructuring of loans, oscillates only between option of an acquirer coming in and clearing their dues on one hand and on the other hand, liquidation.

"Non-adherence to strict timelines forces a stressed asset into liquidation as with the passage of time, the value of the asset deteriorates

As regards balancing of interests of all stakeholders is concerned, the present scheme of IBC itself differentiates between the different categories of creditors. While lot of autonomy has been given to CoC, which comprises the financial creditors, least focus has been placed upon operational creditors. The distinction between dissenting and consenting creditors takes away the freedom of not giving consent as the dissent would cause further financial loss to the dissenting creditors. Also, it needs to be appreciated that discrimination with operational creditors would lead to a cultural change among operational creditors which would impact extending credit while providing goods or services. In an economy which is short of funds / liquidity, such cultural change may adversely impact the economic growth.

As per the data compiled by IBBI, out of 21136 applications filed, 9653 cases involving a total amount of approx. ₹374,931 Cr have been disposed of at pre-admission stage itself. 2838 cases were admitted into CIRP, out of which 306 cases are closed by appeal/review/withdrawal.

The experience, above data and analysis so far suggests that during its journey for over last three years since its inception, IBC has been successful as a tool of recovery while it needs to work hard for being seen as a tool of revival.

Dalmia Bharat Group

Author:

Dr. Sanjeev Gemawat, Executive Director (Legal) & Group Company Secretary

Dr. Sanjeev Gemawat is a General Counsel and Corporate Secretary; a thought leader and a strategist with business orientation. He is also a chartered secretary from UK, a chartered accountant and a cost & management accountant. Dr. Gemawat has almost three decades of experience spanning through varied industries. He is presently working as Executive Director – Legal and Group Company Secretary with Dalmia Bharat Group – a conglomerate that carries a legacy of over 75 years and having presence in cement, sugar, refractories and power businesses. In the past he has been associated with leading groups like DLF, JCB, Olivetti, GBC, Modicorp etc. An acclaimed speaker/author on varied contemporary legal and industry specific issues, he has shared his views at various national and international conferences in India and abroad. He has been a part of various committees/delegations constituted by industry/professional bodies and interacted with multilateral trade bodies including WIPO, WTO, European Commission, and Law Society of England & Wales etc. Presently, Dr. Gemawat is a Co-Chairman of the Law & Justice Committee of PHDCCI. He has been acknowledged and honoured as one of "India's finest In-house counsels", the most "Influential Corporate Counsel & Company Secretary" and also inducted to "Global Hall of Fame" for contribution and work in the Legal Eco System in India and the World.

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CYBER LAW DEVELOPMENTS IN 2019 – TWO MAJOR THRUSTS

Dr. Pavan Duggal

Advocate, Supreme Court Of India
Chairman, International Commission On Cyber Security Law

Cyber law as a discipline saw some massive advances in 2019. The first significant element of 2019 was the determinant focus of sovereign governments to come up with strong national cyber security legislations and legislative frameworks. Consequently, these countries started moving in the direction of trying to regulate cyber security. These regulations normally took two distinctive manifestations. The first manifestation was in the form of specific legislations on cyber security while the second manifestation was in the form of soft legislation or policies on cyber security. In the first category of approaches, we found that many countries specifically legislated new cyber security laws. These included Thailand, which implemented its national cyber security law being Cyber Security Act of Thailand B.E. 2562 (2019) ("CSA"). In addition Macau, recognizing the importance of cyber security for the gaming ecosystem also came up with their national cyber security laws being Macau Cyber Security Law ("MCSL"). These laws, in their own distinctive manners, tend to regulate different aspects of cyber security and activities in the cyber security ecosystem and contributed to the evolving jurisprudence on cyber security law which is an emerging sub-discipline under the cyber law umbrella.

While these legislations sought to stipulate the rights, duties and responsibilities of various stakeholders, the fact also remains that these legislations were also being viewed as a vehicle for strengthening cyber sovereignty. No wonder cyber sovereignty as a concept got increasingly far more attention and focus from various national governments as they came up with distinctive legal provisions in their cyber security laws to protect and preserve national cyber sovereignty. A number of these said legislations were very broadly drafted and using extremely wide language so as to be more futuristic so as to enable the governments to effectively deal with newly emerging challenges in the context of cyber security. A number of the said laws were also repeatedly criticized and targeted by activists who believed that the said legislations became an instrument for potential misuse or for cracking down on civil liberties. Nonetheless, the aforesaid actions clearly underline the increasing significance of cyber security law as an emerging sub-discipline.

In the second category approach to regulating national cyber security, we found that different countries started coming up with and implementing the national cyber security policies. The said policies do not have the status of legislation, but embody mother policy statements and ideas stipulating the version of the countries concerned and how they are seeking to approach the complicated issues of cyber security. Further, we also saw different other countries coming up with their own subordinated legislation in the form of rules, regulations and guidelines on different aspects pertaining to cyber security protection.

The aforesaid approaches became more and more relevant, given the fact that cyber security breaches constantly kept on increasing in the year 2019.

Data breaches have run at a record pace in 2019. Consider these statistics for the first half of the year:

- 3,800: The number of publicly disclosed breaches.
- 4.1 billion: The number of records exposed.
- +54%: Increase in number of reported breaches vs. first six months of 2018.

The trend that developed in the year 2019 clearly showed that countries are beginning to bite the bullet on regulating cyber security as countries are beginning to increasingly realize the significance of cyber security and how the same has a direct connection with national security.

Some countries reiterated their existing stands that their cyber security is a part of their national security and hence came up with holistic visions to deal with regulating cyber security.

The year 2019 was also the year for another remarkable development pertaining to Artificial Intelligence. The year 2019 had begun with a lot of skepticism on how artificial intelligence needed to be treated on a legal basis. However by the time the year came to an end, artificial intelligence law as a sub discipline of Cyber law already started emerging. Different stakeholders are working on different legal nuances impacting artificial intelligence. A lot of work and technological progress done on artificial intelligence in 2019 forced stakeholders to wake up to the need to come up with legal principles to govern Artificial Intelligence. The year 2019 saw various international stakeholders trying to come up with ethical principles and standards to govern artificial intelligence given the propensity of artificial intelligence to be manipulated by variety of external elements. IEEE had come up with its ethical standards being Ethically Aligned Design (EAD1e), "A Vision for Prioritizing Human Well-being with Autonomous and Intelligent Systems on AI. Further, ethical principles to govern AI were embodied in "Australia ethics framework for AI", "JSAI Ethical Guidelines" & "IBM ethical AI principles" with their principles entitled "Fairness", "Respect for Privacy" & "Do not harm". At the end of 2019, the Council of Europe, Council of ministers and committee of ministers appointed the ad hoc committee on AI (CAHAI) which is having the responsibility to come up with the regulatory framework to regulate AI at global level. This Ad hoc committee having a 2-year mandate, clearly has its task well defined.

Various stakeholders are also contributing in this regard. The Artificial Intelligence Law Hub created at New Delhi is researching on common legal principles to regulate Artificial Intelligence at the global level. By the time, the year 2019 came to a close, it became more imperative that the legal issues concerning artificial intelligence will have to be more seriously looked at, by all the stakeholders. This becomes more important since a lot of existing legal principles and jurisprudence may not be directly applicable to Artificial Intelligence. Artificial Intelligence is beginning to throw up new distinctive challenges which require new legal mindsets and new legal approaches. That's why Cyber law is increasingly seeing the emergence of a new sub-discipline, being Artificial Intelligence law. In the coming years, both cyber security and artificial intelligence will continue to be very important thrust areas in evolving Cyber law jurisprudence. I am confident that legal developments that have taken place in the year 2019 in these two thrust areas of Cyber law, will increasingly be consolidated and built upon for the development of further subsequent growth of cyber legal jurisprudence.

"The legal profession has to be mindful of the growing significance of Cyber Security and Artificial Intelligence being part of Cyberlaw jurisprudence. These promise to not just impact every stakeholder, but also completely change the face of the legal profession in the coming few decades

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RWANDA THE RISING STAR IN AFRICA

Rwanda's exceptional economic growth is a result of consequent implementation of efficient economic growth policies by the Rwandan government over the last 12 years...

Rwanda's Political Situation

Since the end of Rwanda's genocide, preluded by President Kagame's Rwandan Patriotic Army (the military wing of the Rwandan Patriotic Front ("RPF")) in July 1994, the small landlocked and densely populated country of 12.8 million. inhabitants located within the African Great Lakes maintained largely political stability enabling substantial economic growth. The introduction of the program of national unity and reconciliation – the National Unity and Reconciliation Commission ("NURC") in 1999 by the RPF, aimed to establish a unified Rwandan identity while fostering reconciliation between Hutu and Tutsi communities and contributed to the political stabilization of the country.

Gregor Pannike

Group Head of Legal
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After President Kagame's election as Rwanda's new President in 2000, he managed to implement significant political reforms such as "Umuganda," a mandatory day of community service bringing together Rwandans from various communities and from different social backgrounds held on the last Saturday of every month and promoting national unity and reconciliation. Initiatives of this sort were essential for nation building and overcoming the aftermath of the horrendous genocide. Other policies of President Kagame's focused on reforming the healthcare sector through decentralization - building hospitals in rural areas and promotion of gender equality and participation of women in the political and private sector. Thereby parliamentary elections in September 2018 saw women fill 64% of the seats.

Domestically, most of the Rwandans consider President Kagame as a guarantor of domestic political stability and security. Foreign politicians and human rights groups, however, often criticize the President for his autocratic and undemocratic way of governing and restricting opposition parties. Despite criticism on his leadership style, he is one of the most charismatic African leaders safeguarding stability for his country and fostering forward thinking-reforms copied often by neighboring countries. During his tenure as African Union (AU) chair between January 2018 and February 2019, he pushed for vital financial and administrative reforms of the AU. Though Rwanda could reinforce a strong political position within central Africa, smoldering security incidents continued to strain Rwanda-

Uganda and Rwanda-Burundi relations in the recent past. With President Kagame's re-election to a seven-year term in the August 2018, following an amendment to the constitution in December 2015 and allowing him to serve a third term, it can be assumed that he will continue on his reform path and promote forward-thinking political and economic policies fostering domestic stability, reconciliation and security.

1. Economic Developments

Rwanda belongs to the group of the four fastest growing economies in the world in 2019, besides Côte d'Ivoire, Ethiopia and Ghana, all located in Africa.[1] Rwanda's exceptional economic growth is a result of consequent implementation of efficient economic growth policies by the Rwandan government over the last 12 years such as the Economic Development and Poverty Reduction Strategies and National Strategy for Transformation ("NST[1]") which enabled robust economic and social performance. Thereby, Rwanda's economy expanded at a real rate of 8.6% in 2018 and is projected to remain strong in 2019 at 7.8% and over the medium term at around 8%. The country's substantial economic growth is supported by quickly growing service, industry and particular manufacturing sector. Growth will be bolstered by the government's continued implementation of its NST[1], which has already resulted in strong investment inflows, diversified exports, and more resilient agriculture. Other large investments, such as Bugesera airport, Hakan peat plant, and electricity infrastructure, will additionally promote growth. Over the longer term, extensive private and government investment in manufacturing, tourism, agriculture, ICT, health and education, among others, should indeed transform the Rwandan economy into higher value-added activities, and boost per capita incomes and living standards.

Based on the extensive reform process, Rwanda has become probably one of the most dynamic and efficient investment destinations within Africa continuing to attract regional and international investments

Rwanda's robust growth resulted in significant decline of poverty from 59 to 39% between 2001 and 2014 and reduction of unemployment from 17.8% in August 2017 to 16% in August 2019[2].

Given Rwanda's promising economic indicators and the government's commitment to continue to pursue its dynamic economic policies, it can be expected that Rwanda's economy will continue to outperform most of the continents' economies in the future.

2. Legal and Regulatory Environment

Rwanda's current legal system is a mixed system based on German and Belgian civil law as well as customary law. After the genocide, the country embarked on an extensive legal reform process whereby various laws in all legal disciplines have been revised and amended in order to meet the requirements of a growing and internationalized economy and new social realities. As part of the legal reform process, the Rwandan government initiated the drafting of a revised modern constitution[3] of the Republic of Rwanda which was adopted by referendum on 26 May 2003 and entered into force on 4 June of the same year providing for a clear separation of powers and a strong commitment to protection of fundamental human rights. Indeed, the new Rwandan constitution provides the recipe and base for good governance standards essential for promoting crucial economic, political and social policies within the country.

During the modernization process of the country's investment framework, the Rwandan government created in 2009 the Rwanda Development Board ("RDB"), a government authority which serves as a one-stop center that facilitates granting company registrations, licenses, tax registration, land title deeds and work permits among other crucial investment services to enable investors to start smoothly and timely their business operations. The RDB provides an efficient and probably the quickest business registration process[4] within Africa whereby investors can apply entirely through an online platform[5] and may obtain their required business license within less than a day. Key legislation for investments in Rwanda is the Law relating to Investment Promotion and Facilitation (N° 06/2015 of 28/03/2015)[6] ("Investment Law") implemented and administered by the RDB. The Investment Law does not only provide far-reaching protection of general investor rights,

[1] https://www.worldbank.org/en/region/afr/overview; [2] https://www.statistics.gov.rw/publication/rwanda%E2%80%99s-unemployment-rate-increasing-quarter-3-2019; [3] https://wipolex.wipo.int/en/text/194315; [4] https://rdb.rw/one-stop-centre/#timeline-for-one-stop-centre-services; [5] https://org.rdb.rw/busregonline; [6] https://rdb.rw/wp-content/uploads/publications/Investment%20Promotion%20Law%202015%20(Investment%20code)).pdf [7] https://www.reuters.com/article/us-volkswagen-rwanda/volkswagen-opens-rwandas-first-car-plant-idUSKBN1JN0NF;

investors capital, intellectual property and repatriation of investor capital and assets, but also provides for effective dispute resolution. Depending on the fulfillment of respective investment criteria, the Investment Law grants substantial non-fiscal and staggered fiscal incentives, such as preferential corporate income tax rates from 0% to 15%, corporate income tax holiday from 5 up to 7 years, exemption from capital gains tax and customs, value-added tax refund and immigration incentives among others.

Based on the extensive reform process, Rwanda has become probably one of the most dynamic and efficient investment destinations within Africa continuing to attract regional and international investments. The RDB registered investments worth US$ 2.46 billion in 2019, an increase of 22.6% from the previous year. In 2018, RDB registered investments worth US$ 2.01 billion. Rwanda's strong economic performance and dynamic investment framework has caught the attention of the German car manufacturer VW, which established a new car manufacturing plant in Kigali and produced their first domestically build car in 2018.[7] The German automaker plans to reach annual production of 5,000 cars in the first phase.

3. Investment Opportunities

Rwanda has plentiful investment opportunities from energy sector (e.g. hydropower, solar photo-voltaic (PV), off-grid projects (standalone solar home systems & mini-grids), manufacturing sector (e.g. construction materials, textiles and garments, packaging materials), infrastructure sector, mining sector, ICT sector to tourism and real estate sector to mention few of the investment options. In 2019, energy and manufacturing accounted for 75% of all investments registered (45% and 30% respectively). Other sectors that attracted significant investments were construction, agriculture, services including ICT as well as mining.

4. The Optimal Market Entry

The optimal set up and market entry structure depends largely on investors' risk appetite and type of investment. Common structures can be any of the domestic (limited liability) companies such as company limited by shares, company limited by guarantee, company limited by both shares and guarantee or unlimited company or the establishment of a branch of a foreign company in case a local presence is required to operate the business. Another option might be to enter into an agent, distributorship or franchise relationship with a well-reputed local trading house which sells the products or merchandise through established sales channels in the domestic or regional markets. This option would be less capital intensive and gives the opportunity to understand the market first before deploying large investments with significant assets and working capital.

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1. Education

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2. Work Experience

During his studies, he gained significant knowledge as a long-term Research Associate with Kübler Law Firm in Frankfurt am Main/Germany in the legal fields of Insolvency Law, Corporate- and Commercial Law, and Banking Law. Further, during his legal clerkship in 2007, he worked as a junior lawyer for the German Federal Foreign Office in the German Embassy in Sana`a in Yemen with great exposure to international law and political analysis. In 2008, he started his career in the Law Firm of Reissmann & Hitzfeld in Germany and worked in the field of commercial and labor litigation, corporate and commercial law. Later, he joined the law firm Meyer-Reumann & Partners in Dubai where he was managing the regional offices in Cairo and Alexandria, Egypt, and later being appointed as Director responsible for the head office of Meyer-Reumann & Partners in Dubai. In 2012, he joined Easa Saleh Al Gurg Group L.L.C in Dubai as Group Head of Legal establishing and managing the Group legal department consisting of 9 lawyers covering the MENA region, Africa and UK.

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EMPLOYMENT PROTECTION JURISPRUDENCE ON THE TRANSFER OF UNDERTAKINGS

A COMPARATIVE STUDY OF THE JURISDICTIONS OF SOUTH AFRICA, UNITED KINGDOM AND EUROPEAN UNION

The article compares Section 197 (the Section dealing with business transfers) of the South African Labour Relations Act 66 of 1995, the Acquired Rights Directive of the European Union, and the Transfer of Undertakings Employment Protection Act of the United Kingdom

Introduction

The purpose of this paper is to make a comparative analysis between Section 197 (the Section dealing with business transfers) of the South African Labour Relations Act 66 of 1995, the Acquired Rights Directive of the European Union and the Transfer of Undertakings Employment Protection Act of the United Kingdom. The Labour Relations Act 66 of 1995 is an outcome of extensive research embodying some of the best practices in the world. That is especially so of Section 197 which deals for the first time in South African law with statutory transfer of businesses ostensibly called transfer of undertakings by the Acquired Rights Directive of the European Union and the Transfer of Undertakings Employment Protection Regulations of the United Kingdom. Section 197 was formulated because of the vacuum that was there in the Labour Relations Act of 1956 in the field of transfer of businesses. Section 197 was formulated, like all other provisions of the Act to give effect to the international law obligations of the Republic.

The ARD has undergone a radical metamorphosis, as has the TUPE. These changes have been necessitated by changing times and the influences these have had in the process of privatization across the EU. The law relating to the transfer of undertakings in the United Kingdom reached its climax with the coming into power of the Conservatives in the late seventies and as a direct result of the privatization campaign of Lady Margaret Thatcher's government. Privatization and compulsory competitive tendering have entered the economic domain of the Republic and they pose the very same challenges that have led to the radical change and shifts of emphasis by the ARD and TUPE.

Makhubalo Ndaba

Trustee – Government Employees Pension Fund (South Africa)

Post-apartheid political economy

The challenges that are brought about by the post-apartheid political economy in South Africa are such that, South Africa is expected to level the labor relations playing fields so as to attract direct foreign investment. It is expected to play a significant role in shaping African and global affairs and it is accordingly expected that its laws and policies particularly on the labor market are compatible with international standards. The laws in these different jurisdictions have got their own values, norms and aspirations, which differ because of the historical facts that inform their diversity. As the positivists would say, "law is simply what the powers that be, the sovereign lay down."[1] When looking at the concept of sovereignty, it is doubtful whether at this age of globalization, we will be able to confidently claim that nation states are passing laws based on their own will or based on the will of multinationals. Globalization seeks to transform the respective national states political economies into one unit of global economy with an assumption that the global market is homogenous. This entails amongst others that the notion of sovereignty espoused by the positivists is bound to be neutralized by the globalizing world.

Another factor that needs to be observed is the recognition that, social reality is not stagnant. What had happened in Europe fifty years ago should not necessarily be imported into South Africa as sui generis.

As the Spanish Mexican theorist, Luis Racasens Siches had once observed, "social reality is diverse and changing."[2] This is what exposes the weakness of the positivist theory as it neglects the social dimension of the law. This is perhaps the reason why Enright suggests a multiplicity of theories when dealing with law. "With law it is suggested that one of the reasons for the variety of theories and lack of unanimity, is that law is complex. Thus, there is a diversity of theories which have been formulated in different legal systems and emphasize different aspects of the law."[3]

With the obvious neglect of the social dimension of law by the positivists as represented by Graham Bentham, one is persuaded by Roscoe Pounds' sociological theory. "Roscoe Pound bases his theory on the existence in society of interests. He classifies interest as individual, public or social. It is the function of the law to balance the conflicting claims of the various interests in the most efficient possible way."[4]

However, the sociological theory cannot be spared of criticism as well. In this age of globalization, it is inconceivable that the law will seek to balance the interests of those affected.

There is a general admission that globalization serves the interests of a particular section of society. In the study of labor relations, where there is an obvious contestation of power, it is clear that globalization has led to the tilting of the scales in favor of business. An amalgamation of positivist and sociological theories is therefore inevitable in terms of their definition of the concept of law with the former emphasizing sovereignty and the latter emphasizing societal values. "Dunlop attempted to provide an integrated theory of industrial relations and focused his attention on the system of rules which govern the workplace and work community. His major work provided a theoretical framework which defines the industrial relations system as a subsystem of the wider society."[5]

However, both positivists and the sociological theorists are less vocal in espousing the fact that the study of law is more on the practical than on the theoretical side. This paradigm is represented by the Aristotelian theory. "We cannot escape the realm of practical conflict over goods and virtues by the strategic retreat to a purely theoretical or scientific perspective; law and legal argument will always be rhetorical and practical rather than demonstrative and theoretical."[6]. Aristotelian jurisprudence encourages detailed empirical studies of legal policy.

Labor Relations Policy Making in South Africa

Labour relations policy making in post-apartheid South Africa is faced with several challenges. The majority of them hinge on political, economic and social factors. Firstly, there is a working-class population which is demanding employment protection during a transfer of business from one employer to the other.

Secondly, there are international investors that are demanding for the relaxation of employment protection laws during business transfers; so that the employer who has bought a business should not be burdened by the obligations of the previous owner. This is precipitated by the developments in other jurisdictions, particularly the United Kingdom and the European Union and is a requisite for them to invest in the South African economy.

Thirdly, there is a largely poor population who are looking to the government to provide basic services to them at a lesser or no cost at all.

Government which is dominated by a strong working-class component, can source this money through increased foreign direct investment, however, at a price of relaxing employment protection laws and at the risk of alienating its working-class support base.

> *The challenges that are brought about by the post apartheid political economy in South Africa are such that, South Africa is expected to level the labour relations playing fields so as to attract direct foreign investment. It is expected to play a significant role in shaping African and global affairs and it is accordingly expected that its laws and policies particularly on the labour market are compatible with international standards*

The United Kingdom and the European Union

As a member of the European Community, the United Kingdom is bound by the directives of the community, Whereas it has taken some time for it to comply with the ARD, it did in fact comply at a later stage. It is interesting to note that the United Kingdom was reluctant to fully abide with the ARD before the 1981 Regulations under discussion. "It was unpopular with both political parties (Tories and Labour) and was only implemented after threats of action before the European Court of Justice, the implementation three years late was carried out through TUPE."[7]

The TUPE regulations were introduced in the United Kingdom to implement the **EC Acquired Rights Directive (77/187/EEC)** adopted in 1977. Describing the objectives of the TUPE Regulations, the Department of Trade and Industry (UK) states that, 'government considers that the TUPE regulations are based on a positive principle - the coupling of flexibility for business with fairness for employees.

Internationalization of Markets and Capital: Globalization

Within the great globalization debate, the balance of forces in the global labor relations field are clear that employer

[1] Enright C, (1987) "Studying Law", Sydney, Branxton Press, Page 379. [2] Friedman , W(1973) "Phenomenology and Legal Theory", Phenomenology and Social sciences, Volume 2, Evanston, Northern University Press, Page 358. [3] Enright,(1987) "Studying Law", Sydney, Branxton Press 375. [4] Ibid, 386. [5] Finnemore (1998)" Labour Relations in South Africa", Cape Town, Butterworths Page 4. [6] Brooks R, (2001)"Aristotle and Modern Law", Wiltshire, Cromwell Press, Page xx. [7] Pitt,G(1998)" Cases and Materials in Employment Law", London ,Pittman Publishers, Page 359. [8] Van der Maas (2004)"British Labour and the European Union", Paper for UACES/ESRC Seminar Page 3. [9] Hyman R (1997)" Trade Unions and Interest Representation in the Context of Globalization Transfer", Vol 3, No.3, November 1997, Brussels, ETUI. [10] Finnemore(1998)"Labour Relations in South Africa", Cape Town, Butterworths 65. [11] Finnemore(1998)" Labour Relations in South Africa", Cape Town, Butterworths 12. [12] Bourn(1983) "Redundancy Law and Practice" London, Butterworths, Page 173. [13] DuToit, D(1998) "The Labour Relations Act 1998", Durban, Butterworths , Page 409. [14] Ibid at 409.

associations and trade unions are not having the same political influence in the shaping of global, continental and country labor policies.

"The internationalization of markets and capital means national industrial relations regimes are no longer able to deliver what they once did for the trade union movement."[8] Indeed at this age of globalization, unions are losing their influence in favor of capital and the consequence of that is they are likely to oppose whatever they deem is the agenda of the international market to justify their continued existence. As Hyman puts it, "unions which in previous decades based their appeal to workers on their ability to win tangible improvements in pay and working conditions, have a far harder task to justify their existence if obliged to accept the reversal of their former achievements."[9]

The restructuring of state assets and privatization thereof have led to a stiff competition from South Asian countries which pay far lower wages for labor-intensive industries. The result is that companies are bound to do business where wages are lower and labor laws are relaxed to maximize their profits. "The average manufacturing wage in South Africa is R1500 per month compared to R110 in Vietnam, R470 in Indonesia and R740 in Malaysia."[10]

As Finnemore has observed that, all developing countries urgently require foreign direct investment. In order to maximize its attractiveness as a site of such investment by transnational companies, the state minimizes the cost of labor by ensuring its docility."[11]

Defining a Transfer

It is important to state that the most controversial aspect in the transfer of undertakings has been the changing definition of what constitutes a relevant transfer. This changing definition has in many instances been influenced by decided cases both in the European Community and the United Kingdom. Whilst the United Kingdom has had to stick to its guns on many occasions, it has sometimes been forced to follow what is being dictated by EC law. This is more so of the Transfer of Undertakings. In the United Kingdom, the question of what amounts to a relevant transfer has always been a dodgy one because of privatizing most state assets. In deciding whether a particular transfer is indeed a relevant transfer, the following have to be taken into account:

- Whether tangible assets have been transferred
- Whether the majority of employees have been transferred
- Whether the customers are transferred
- Similarity between the service provided by the old and new undertaking
- Whether there is a contractual link between the transferor and the transferee

Defining an Undertaking

Adding to the confusion of what constitutes a relevant transfer has been the water-tight guidelines that were put in the matter of **Spijkers v Gebroeders Benedik Abattoir [1986]2 CMR 296**, it was held here that if a means of production of the enterprise are transferred as a unit from one owner to the other, that is a relevant transfer. When courts are faced with a question of determining whether a particular entity is an undertaking in terms of the ARD and TUPE, there has to be a:

- Stable economic entity not limited to one specific works contract and an organized grouping of people and assets enabling the exercise of the activity pursuing a specific objective
- An entity that must be sufficiently structured and autonomous but does not necessarily include significant assets
- An organized group of workers performing a common task
- An entity, in itself that requires for its identity its workforce, management staff, and the way in which work is organized and where appropriate the operational resources available to it

The United Kingdom's law of transfer of undertakings initially put more emphasis on commercial ventures as principal entities capable of being transferred. "The emphasis in the definition is therefore on the transfer of a business as a going concern. The transfer of governmental or charitable activities from one employer to another are excluded as not being commercial ventures."[12] The United Kingdom government delayed the applicability of the Acquired Rights Directive of the European Union in so far as transfer of undertakings is concerned.

Ironically, when Section 197 of the 1995 Act was promulgated, it put much emphasis on going concerns as having the capability of being transferred. This emphasis on economic entities automatically excluded governmental and charitable organizations.

Prior to the coming into effect of the **Labour Relations Act 66 of 1995**, there was no law in South Africa that dealt specifically with the transfer of undertakings and the courts had to borrow from the Transfer of Undertakings Employment Protection regulations of the United Kingdom. "Under common law (South Africa), the sale of business in general meant termination of the contracts of the existing employees and left it up to the purchaser to decide whether or not to offer them re-employment."[13] A slight movement towards the recognition of employee rights during transfers was witnessed with the matter of, **Kebeni v Cementile Products (Ciskei) PTY Ltd (1987) ILJ 442 IC**, where the Industrial Court referred for the first time to the British Tupe Regulations of 1981 in arriving at the decision that safeguards should be incorporated into the agreement between employer and the purchaser of the business to ensure that the interests of the workforce are adequately protected. "But understandably the Industrial Court hesitated to order a remedy that would have major socio-economic policy implications and employees accordingly acquired no right to continued employment on transfer of the business where they worked."[14]

Second, third and contracting in business transfers could be relevant transfers in the true sense of the word. The facts of the Suzen case are as follows; Suzen was a cleaner employed in Germany by a company called Zenhacker. Zenhacker lost the contract to another company and dismissed Suzen. She was challenging that, in terms of the EU Directive that was a relevant transfer and she should have been taken along by the new company. The German Court referred the matter to the ECJ to inquire whether the Acquired Rights Directive was applicable in the circumstances; it was decided on the affirmative. What Suzen meant therefore was that where a change in contractor involves the transfer of significant assets or a major part of the workforce, in term of their numbers and skills, then that is a relevant transfer. Suzen has been criticized as having caused a lot of confusion in the already confusing state of affairs of the transfer of undertakings.

Section 197 is amongst the various provisions of **the Labour Relations Act 66 of 1995** that have been amended. It is my considered opinion that the amendment to the Labour Relations Act and Section 197 in particular was influenced inter alia by the changes in the European Union context.

The most important feature of the amended Act is that it seems to be premised directly on the TUPE of the United Kingdom. Whilst at this stage it is still difficult to establish the extent upon which it will be able to deal with most of the pertinent questions faced by its counterparts in Europe and the United Kingdom. It is however important to understand that there is a vast difference between the legal systems of United Kingdom/European Union and South Africa. Such differences have got a propensity of impacting in the process of transplanting the legal norms of the former to the latter. Butler[15] states that, "for the legal norm to be transplanted from one legal system to the other, there needs to be a study of conditions in which the law, norm or model intended for transplantation exists, and comparison thereof with the conditions into where it is to be transplanted. As a rule, if conditions differ, difficulties and obstacles, sometimes insurmountable, arise for transplantation, transplanted norms/models will not take root in new conditions." This feature of differences in the legal systems, social, economic and political conditions in the respective jurisdictions mentioned above will act as a compass in this investigation, lest the present investigators' approach be neutralized by him having to bring into surface his implicit background assumptions.

In the South African Labour Court matter of **National Health and Allied Workers Union v University of Cape Town [case C3999/99]DATED 29 March 2000** (unreported), the question before the court was whether outsourcing of part of an employers business amounts to a transfer of part of its business as a going concern, it was held by Mlambo J, that it did not. Contrastingly, it was held by the English Court in **Schmidt v Spar [1994] IRLR 302**, that there was a relevant

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transfer in a situation where a bank had contracted out its cleaning services to an outside organization. These are some contradictions in the jurisprudence of the respective countries' was held in the matter of **Schutte and others v Powerplus [1999] 20 ILJ 655**, that in answering the question of whether or not the whole or part of a business of an employer is deemed to have been transferred as a going concern, the court must look into the substance and not the form of the transfer. It was further held that the court must weigh the factors that are indicative of a transfer and those which are not. In this matter, reference was made to certain English cases in which it was held that outsourcing schemes amounted to transfers of business in terms of comparable British Regulations. The South African Labour Court has constantly referred to English law in its approach to the transfer of undertakings.

Conclusion

The discussion of the notion that South African law should or shouldn't lag behind the developments of the developed world, particularly those of the United Kingdom and the European Union is now settled. When the Labour Relations Act 66 of 1995 came into effect, with a particular reference to Section 197, it was indeed premised on the legal standing of transfer of undertakings in the United Kingdom during those years. However, many developments have taken place since then, including the decisions of the European Court. However, it was only in 2001 that we saw a movement by the South African government amending this Section and thus bringing to the fore some very important amendments. "The problem of applying labor law norms is complex in the study of national law and much more so in comparative legal research. Indeed, to arrive at correct conclusions, it is not enough to make a formal judicial comparison of norms, it is also essential to know how fully a foreign norm is applied."

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Government Employees Pension Fund (South Africa)

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Makhubalo Ndaba is a Trustee of the Government Employees Pension Fund (GEPF) of South Africa, which is the largest pension fund in Africa. He also serves as a member of the Board of Directors of the Public Investment Corporation (PIC), the state asset management company of South Africa. Ndaba was awarded a British Chevening Scholarship Award in 2000. In 2004, he was awarded the South Africa-Netherlands Partnership on Research Development Scholarship (SANPAD). He holds a Masters in Employment Law from the University of Central Lancashire, United Kingdom and he is an admitted Advocate of the High Court of South Africa. He has served as a Senior Pension Funds Adjudicator in South Africa. His main focus is on Pension Fund Governance, Social Security and Retirement Fund policy analysis and development. He has presented extensively in conferences on pension fund matters internationally.

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Disclaimer – The views expressed in this article are the personal views of the author and are purely informative in nature.

MERGERS & ACQUISITIONS THAILAND

As the Thai government has already issued merger control regulations in the end of 2018, companies, lawyers and business consultants must take the merger control regulations into consideration when conducting M&A activities

Even in the current economic climate in Thailand, M&A activities remain active. Big conglomerates have actively acquired companies and/or startups both in Thailand and overseas to expand their businesses and to gain competitive advantage domestically and internationally. Medium and small size companies also conducted M&A or joint ventures to find a synergy and maintain or improve their position in the market. In 2020, it is expected that M&A activities will continue to grow, particularly outbound investments, as big corporations take advantage of strong Thai Baht.

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Recent developments

As the Thai government has already issued merger control regulations in the end of 2018, therefore, companies, lawyers and business consultants must take the merger control regulations into consideration when conducting M&A activities. There has been a certain amount of deals in Thailand which were subject to merger control regulations in 2019.

Methods for M&A activities

An acquisition of shares of a company and acquisition of business and assets are most common acquisition methods in Thailand.

Acquisition of shares

The share acquisition is the most common method for a company to acquire a target company. It is easier to implement but due diligences must be conducted to identify risks in the target company and indemnities and warranties shall be incorporated in the share purchase agreement.

It is worth noting that the transfer of shares will be subject to stamp duty in Thailand at the rate of 0.1 percent of the greater of transfer value or par value.

Acquisition of business/assets

An acquisition of assets will be done in the case where the acquirer does not want to run the risk of having hidden legal and tax liabilities in the target company as legal and tax liabilities generally remain with the target company and are not transferred with the business/assets.

Nonetheless, the Foreign Business Act may restrict foreign companies to directly hold business/assets. Thus, a Thai company must be established to hold business/assets in Thailand. Please note that certain legal requirements have to be met.

Please note that the transfer of assets is normally subject to Value Added Tax and certain transactional documents are subject to stamp duty and other fees in Thailand.

Relevant regulations

Foreign Business Act (FBA)

The FBA is the most important regulation to be considered when foreign companies conduct M&A transactions in Thailand. The FBA restricts and forbids foreign nationals and companies from doing some business activities, including most of the service businesses in Thailand. For the purpose of the FBA restrictions, a 'foreigner' is classified as a foreign individual, a company incorporated outside Thailand, or a company incorporated in Thailand that is majority-owned by foreign individuals or foreign companies.

Therefore, in some cases, the foreign companies shall not be able to hold more than 50% of shares in the Thai company.

Foreign Business Department in the Ministry of Commerce is a government agency which oversees the FBA.

In 2020, it is expected that M&A activities will continue to grow, particularly outbound investments, as big corporations take advantage of strong Thai Baht

Trade Competition Act (TCA)

After the TCA came into force in 2018, it has played an important role in M&A transactions in Thailand. Any M&A transaction which meets the requirements under the TCA must comply with the provisions of the TCA to (i) obtain pre-approval or (ii) post-notification of the transactions. In short, pre-approval will be required when the M&A transaction would create a monopoly and the post-notification will be required when the M&A transaction will result in less competition in the market.

The Office of the Trade Competition Commission is a government agency that oversees the TCA.

Labour Protection Act (LPA)

In share acquisition transactions, there will be no requirement to obtain prior consent from the employees as, legally speaking, the employer is still the same.

However, in acquisition of business/assets that involve the transfer of employees, the LPA will provide that all rights, duties and privileges of the employees will be assumed by the new employer and the transfer of employment must be consented by the employees. In case where any employee does not give the consent or does not want to work for the new employer and the existing employer stop operations, it shall be deemed that the employment contract is terminated and such employee shall be entitled to severance pay from the existing employer.

Department of Labor Protection and Welfare is a government agency that oversees the LPA.

It is important to note that M&A activities in different industries may be subject to different and specific regulations in each industry.

Choice of acquisition funding

In acquisition transactions, an acquirer will have to decide whether to fund the vehicle with debt or equity, or even a hybrid instrument which combines the characteristics of debt and equity.

Debt

The advantage of using debt is the deductibility of interest for tax purposes and the ease in repatriating the investment via repayment of principal. On the other hand, the payment of dividends is not deductible and returns of capital can be an onerous and time-consuming task.

Thailand does not have thin capitalization rules.

Equity

An acquirer may use equity to fund its acquisition. However, using equity funding may not be attractive since dividends are not deductible for Thailand tax purposes and dividends cannot be distributed unless the company is profitable. Also, a return of capital (equity) will be more difficult than a return of the loan.

However, in the cases of joint venture or investment in startups, it is more common to do the equity funding rather than the debt funding.

Entire business transfer and amalgamation

Under the Thai Revenue Code, it allows a company to conduct an entire business transfer, under which the business and liabilities of one company will be transferred to another company by doing a share swap. If all conditions are met, the entire business transfer will be a tax-free transaction.

Thailand also has an amalgamation process where two companies can merge to form a new company. This transaction should be free from Thai corporate income tax, but any tax losses in either of the original companies will be lost. Both the original companies dissolved as a part of the amalgamation.

WAROT BUSINESS Consultant Ltd.

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Warot Wanakankowit is a founding Partner at Warot Business Consultant Ltd and Wingman & Partners Ltd. He has substantial experience in taxation, corporate and commercial transactions, foreign direct investment and foreign business law, labour and employment, and merger and acquisition transactions. Warot has also fulfilled the role of director in various companies in order to help set up operations and manage those companies.

Warot Business Consultant Ltd. has worked with several corporations for commercial transactions and joint venture matters and assisted multinational companies in setting up business in Thailand either by establishing wholly owned subsidiaries or partnering with Thai companies.

On the other hand, Wingman & Partners Ltd. is one of the best-known law firms in the startups scene in Thailand. It has actively helped and represented both VCs and startups in Thailand for a few years.

Warot's recent cases include representation of a reputable truck manufacturer in Thailand in negotiating the shareholders' agreement with one of the biggest distributors of automotive parts in Australia to set up a joint venture company in Thailand and representation of one of the fast-growing advertising companies in negotiating the shareholders' agreement with 3 corporate venture capitalists for fundraising.

Warot has been invited to be a speaker in many startup events such as Techsauce Global Summit and Thailand Startup Week.

Prior to founding his own firm, Warot worked at Weerawong, Chinnavat & Peangpanor Ltd., one of the leading law firms in Thailand. Before that he worked at KPMG Phoomchai Tax Ltd. as well as with PricewaterhouseCoopers Legal and Tax Consultants Ltd. in Thailand. Warot obtained his LL.B. degree from Thammasat University, and LL.M. degree from King's College University, in the UK.

Practice Areas

- Mergers & Acquisitions;
- Corporate and Commercial Transactions;
- Foreign Direct Investment;
- Tax
- Labour and Employment

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Disclaimer – This article only gives general guidelines for Mergers & Acquisition in Thailand. It is advisable to obtain advise from legal and business consultants before implementing or conducting M&A activities in Thailand.

THE PERSONAL DATA PROTECTION BILL, 2019

The PDP Bill is a welcome step forward to address the needs of an evolving data protection regime in India...

The Personal Data Protection Bill, 2019 ("**PDP Bill**"), which was presented before the lower house of the Indian Parliament on December 11, 2019, seeks to provide for the protection of personal data of individuals and establish a Data Protection Authority ("**DPA**"). The PDP Bill has been referred to a joint select committee of both the houses of the Indian Parliament, which is expected to submit its report in early 2020. Accordingly, there may be changes to the PDP Bill based on the recommendations of the joint select committee. Once enacted, the PDP Bill will replace

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Section 43 of the Information Technology Act, 2000 and the Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Data or Information) Rules, 2011 and prevail over any other inconsistent laws in this regard (e.g., any sector-specific laws).

The PDP Bill applies to the processing of personal data by: (a) the Government, (b) companies incorporated in India and (c) foreign companies dealing with personal data of individuals in India. It covers the following categories of information:

(i) "Personal data": Any data about or relating to a natural person who is directly or indirectly identifiable having regard to any attributes or characteristics of such person (online or offline) and includes any inference drawn from such data for the purposes of profiling;

(ii) "Sensitive personal data": A subset of personal data which may reveal, relate to or constitute financial data, health data, official identifier, sex life, sexual orientation, biometric data, genetic data, transgender status, intersex status, caste or tribe, religious or political belief or affiliation. Additionally, the Central Government in consultation with the DPA and the sectoral regulators, notify other categories of personal data as sensitive personal data; and

(iii) "Critical personal data": A subset of personal data and will include such categories of personal data as may be notified by the Central Government.

The PDP Bill does not apply to the processing of anonymized data, i.e., personal data that has been irreversibly transformed or converted to a form in which a data principal cannot be identified in a manner that meets the standards prescribed by the DPA.

Notice, Consent and Purpose

The PDP Bill sets out certain rights of a "data principal", i.e., the individual whose personal data is collected, including to correct incomplete or inaccurate personal data, erase personal data that is no longer required for the consented purpose, and the right to be forgotten.

A "data fiduciary", i.e., an entity or individual who decides the means and purpose of processing personal data, is permitted to collect personal data subject to the consent of data principals and such personal data can be processed only for the purpose consented to by the data principal or which is incidental to or connected with such purpose, and which the data principal would reasonably expect the use of such personal data. Further, explicit consent will be required for collecting sensitive personal data.

The data principal may give or withdraw her consent to the data fiduciary through a consent manager (an entity registered with the DPA which a data principal may use to gain, withdraw, review and manage her consent). Regulations in relation to the registration and other obligations of a consent manager are proposed to be issued by the DPA.

The consent requirement has been dispensed with in certain specified cases, e.g., the performance of any lawful function of the State, compliance with any order/judgment of any court, a medical emergency, disaster or breakdown of public order and an employment-related purpose. Additional grounds for exemption from the consent requirement are under the category of "reasonable purpose" (which includes mergers and acquisitions, recovery of debt, operation of search engines and whistle blowers) and may be notified by the DPA.

A data fiduciary is required to give notice to the data principal at the time of collection of personal data or as soon as reasonably practicable where the data is not collected from the data principal with certain prescribed details, including the purpose of collection; identity and contact details of the data fiduciary and data protection officer, if applicable; procedure for withdrawal of consent; basis for such processing and consequences of failure to provide personal data; source of collection (if not collected from the data principal); persons with whom the personal data may be shared; information regarding any cross-border transfer of personal data; period for which the personal data will be retained and procedure for grievance redressal.

The PDP Bill clarifies that provision of any goods or services to the data principal cannot be made conditional on the consent of such data principal to the processing of any personal data that is not necessary for such purpose.

Data Localization

Sensitive personal data and critical personal data are required to be stored in India.

Sensitive personal data is permitted to be transferred outside India only in certain cases (e.g., where the transfer is made pursuant to a contract or scheme approved by the DPA or the Central Government has allowed the transfer to a country or entity or class of entity subject to satisfaction of certain conditions or where the DPA has allowed such transfer for a specific purpose), provided that such data continues to be stored in India and explicit consent has been obtained in this regard from the data principal.

The processing of critical personal data outside India is prohibited under the PDP Bill. However, the transfer of such critical personal data is permitted to a person or entity engaged in provision of health services or emergency services in specified circumstances or to any country or entity or class of entity approved by the Central Government subject to the satisfaction of certain conditions and where such transfer in the opinion of the Central Government does not prejudicially affect the security and strategic interest of India.

Several aspects of data protection, which will be key to an effective and successful implementation of the new regime, have been delegated to the DPA and/or the Central Government. Accordingly, the real impact of the PDP Bill will be visible once the relevant rules and regulations are in place

Other Obligations of Data Fiduciaries

In addition to the obligations discussed above, the PDP Bill imposes several obligations on data fiduciaries. Data fiduciaries will be required to put in place necessary safeguards for complete, purposeful and accurate processing of the personal data, implement a privacy by design policy that is certified by the DPA and an effective mechanism to redress grievances of data principals, notify instances of breach to the DPA and undertake periodic review to ensure that personal data is not retained beyond the period necessary to satisfy the purpose for which it was processed unless there is explicit consent. The PDP Bill prescribes additional compliance responsibilities on the data fiduciaries which process personal and sensitive data of children.

Data fiduciaries may be designated as significant data fiduciaries ("SDF") on the basis of considerations such as volume of personal data processed, sensitivity of the personal data processed, turnover of the data fiduciary or any other considerations as may be specified by the DPA.

The Central Government may also notify certain types of social media intermediaries (other than intermediaries that primarily enable commerce or business oriented transactions, provide access to internet or are search engines, e-mail services, storage services or encyclopedias) as SDFs. SDFs will be required to undertake additional compliances in the manner prescribed by the DPA, including conducting a data protection impact assessment, arranging an audit of its policies by an independent data auditor and appointing a data protection officer.

Exemptions

The PDP Bill provides exemptions from certain provisions in specified cases, for example, provisions relating to consent requirement, data localization and certain other obligations of data fiduciaries where disclosure of personal data is necessary for the prevention, detection, investigation and prosecution of any offense, enforcing any legal right/claim or by a court or tribunal or for any personal or domestic purpose by a natural person or for any journalistic purpose.

The PDP Bill also contemplates the creation of a 'sandbox' to encourage innovation in artificial intelligence, machine-learning or any other emerging technology in public interest. Details regarding registration by eligible entities and the relaxations proposed to be extended to such entities under the sandbox will be issued by the DPA.

Additionally, the PDP Bill states that the Central Government has the power to exempt any agency of the Government from complying with the provisions of the PDP Bill in the interest of sovereignty and integrity of India, the security of the State, friendly relations with foreign States and public order. This discretionary power of the Central Government does not appear to be subject to any limitations.

Penalties

Similar to the European Union's General Data Protection Regulation, the PDP Bill prescribes penalties which can be imposed on a data fiduciary. These penalties may extend to the higher of a maximum of ₹150 million or 4% of such data fiduciary's total worldwide turnover for the preceding financial year. The PDP Bill also prescribes criminal sanctions where a person re-identifies and processes personal data without the consent of data fiduciary or a data processor which has de-identified such personal data. An aggrieved data principal is also entitled to recover compensation from the data fiduciary or the data processor on making a complaint to the relevant adjudicating officer in event of a violation of his rights under the PDP Bill.

Conclusion

The PDP Bill is a welcome step forward to address the needs of an evolving data protection regime of India. However, several aspects of data protection (such as categorization of personal data as sensitive personal data and critical personal data, details on anonymized data, conditions from exemption from certain provisions of the PDP Bill, categories of SDFs, conditions for registration as a consent manager and processing of personal data and sensitive personal data of children), which will be key to an effective and successful implementation of the new regime, have been delegated to the DPA and/or the Central Government. Accordingly, the real impact of the PDP Bill will be visible once the relevant rules and regulations are in place.

The PDP Bill does not provide for any transitional provisions and timelines for implementation. Currently, the PDP Bill contemplates that the provisions will come into force the day they are notified in the official gazette of India (which will occur after the approval of the Indian Parliament and the President of India). We are hopeful that the PDP Bill, in its final form, provides companies sufficient time to conform their business practices to ensure compliance with the PDP Bill. Nevertheless, corporates in India that would get categorized as a data fiduciary under the PDP Bill should review their existing data protection framework.

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__Disclaimer__ – This article has been co-authored by partner Radhika Iyer, and associates Lakshmi Pradeep and Anshul Chopra from S&R Associates. This article is intended only as a general discussion of these issues and is not intended for any solicitation of work. It should not be regarded as legal advise and no legal or business decision should be based on its content.

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Theme: Cross-Border Laws: Business Opportunities, Challenges Faced & Future Trends

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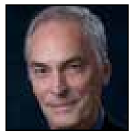
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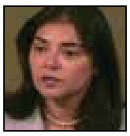
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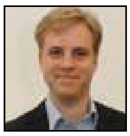
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- Cybersecurity
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- Privacy Impact post GDPR and CCPA specially for the Multinational Companies
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PROMINENT U.S. APPEALS COURT AFFIRMS THE EXTRATERRITORIAL REACH OF U.S. EVIDENCE DISCLOSURE STATUTE (28 U.S.C. § 1782)

For litigants outside the U.S., the bounty afforded by access to U.S.-style discovery via the unique U.S. statutory mechanism in 28 U.S.C. § 1782 has expanded substantially, making its utilization a compelling prospect whenever possible

The increasingly popular U.S. statute concerning cross-border judicial assistance, 28 United States Code ("U.S.C.") § 1782, enables a federal District Court (a court of first instance) to order a "person" that "resides or is found" within its jurisdiction to produce evidence for use in a proceeding in a foreign or international tribunal. Thus, a party participating in or contemplating litigation, an adversarial or investigative governmental proceeding, or even (in some cases) arbitration, outside the United States, may obtain evidence for those purposes from persons who reside or are found within the United States. (This statutory mechanism is remarkable also because there is no reciprocity requirement vis-à-vis the country in which the foreign or international tribunal in question is situated or the country of domicile of the requesting party.)

The Second Circuit Court of Appeals -- a rather influential U.S. federal appellate court, whose jurisdiction includes New York -- recently addressed two questions concerning

Gilbert Samberg

Member, Mintz

the application of this unique legislation: (1) on what basis does the District Court have personal jurisdiction over a non-party for purposes of the statute (how does a court interpret and apply the "resides or is found" criteria in jurisdictional terms); and (2) can the District Court order such a person to produce evidence that it maintains outside of the U.S.? See In re del Valle Ruiz, 2019 U.S. App. LEXIS 30002 (2d Cir. Oct. 7, 2019).

The court's supportive decision concerning the latter ("extraterritoriality") issue has gotten the principal coverage in the legal press. (But its decision concerning the jurisdiction issue is likely to have a more regular impact on the utilization of the § 1782 discovery mechanism.) Specifically, the court adopted the earlier reasoning of another U.S. Circuit Court of Appeals and decided simply that a District Court "is not categorically barred from allowing discovery under § 1782 of evidence located abroad." Id. at *24. In effect, the Federal Rules of Civil Procedure ("Federal Rules") on evidence disclosure (referred to in the U.S. as "discovery"), with its particularly robust tools, will control.

Thus, the Second Circuit Court of Appeals has opened the door within its jurisdiction to access, for use in foreign proceedings, not only to a full array of evidence maintained within the territory of the United States, but also to evidence held elsewhere that is within the possession, custody or control of a person that is within the court's jurisdiction. Limits may be placed case-wise by the courts in their discretion, but the opportunity for more extensive and effective U.S.-style "discovery" of such evidence is clearly available.

1. Context

Here is the context. In *del Valle Ruiz*, investors in Banco Popular Español ("BPE") were contesting the legality of a Spanish government-forced fire sale of BPE to Banco Santander ("Santander") in certain foreign proceedings. The investors sought discovery, under 28 U.S.C. § 1782, in New York from Santander and its New York-based affiliate, Santander Investment Securities, Inc. ("SIS"), "concerning the financial status of BPE."

Santander is a Spanish banking company with its principal place of business in Madrid, while SIS is a Delaware corporation with its principal place of business in New York City. *id. at *7 n.4.* Santander argued in the District Court in Manhattan that it was not "found" within that court's jurisdiction, for purposes of § 1782, and that although SIS resided or was found in that district, it was "not involved with the acquisition of BPE." *id. at *7-*8.*

The District Court determined that it had general personal jurisdiction over SIS, and that finding was not challenged on appeal. Santander was not subject to such general personal jurisdiction, however, and so the court considered whether it had specific personal jurisdiction over that entity. It held that it did not.

The District Court ultimately denied the application for discovery vis-à-vis Santander for lack of personal jurisdiction, but granted discovery from SIS and in that regard "rejected [the] argument that § 1782 does not allow for extraterritorial discovery." *id. at *3-*4.* That is, the investors could demand documents and information that SIS maintained outside of the U.S. The Second Circuit affirmed.

2. Extraterritoriality

The Circuit Court reviewed de novo the District Court's decision that it could, by virtue of § 1782, compel a person (in this case, SIS) to produce evidence that was held overseas. See *id*. at *21. The Court first noted the statutory construction doctrinal presumption against extraterritoriality in the application of a federal statute ("absent clearly expressed congressional intent to the contrary, federal laws will be construed to have only domestic application"). See *id*. But the Court found that "this presumption has no role to play here." *id*. at *22. Instead, the Court cited approvingly the reasoning of the Eleventh Circuit Court of Appeals in a 2016 decision, and joined that court in holding that a District Court is not barred from granting discovery under § 1782 of evidence located outside the U.S. See *id*. at *23-*24.

> *"For litigants outside the U.S., the bounty afforded by access to U.S.-style discovery via the unique U.S. statutory mechanism in 28 U.S.C. § 1782 has expanded substantially, making its utilization a compelling prospect whenever possible*

The Eleventh Circuit had noted that discovery pursuant to § 1782 would, by its terms, generally follow the Federal Rules of Civil Procedure, which in turn authorized extraterritorial discovery "so long as the documents to be produced are within the subpoenaed party's possession, custody or control." *id. at *23.* Hence, it concluded that § 1782 likewise allows extraterritorial discovery of responsive materials. *id.* at *23-*24. The Second Circuit agreed.

(As a grace note, however, the Second Circuit instructed that a District Court should consider the location of documents and other evidence when deciding whether to exercise its discretion under §1782 to authorize such discovery. *id*. at *24.)

3. Conclusion

For litigants outside the U.S., the bounty afforded by access to U.S.-style discovery via the unique U.S. statutory mechanism in 28 U.S.C. § 1782 has thus expanded substantially, making its utilization a compelling prospect whenever possible.

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SUMMARY OF THE ESSAR STEEL JUDGMENT

With this landmark judgment, the Supreme Court ushered in some much needed clarity into various long debated issues in relation to a CIRP of a corporate debtor

Recently, the Hon'ble Supreme Court of India ("**Supreme Court**"), while setting aside the much debated judgment of the Hon'ble National Company Law Appellate Tribunal ("**NCLAT**"), delivered its verdict in the matter of Committee of Creditors of Essar Steel India Limited v. Satish Kumar Gupta and Ors., whereby it has, inter alia, upheld the primacy of the decision-making power of the committee of creditors ("**CoC**") in determining distribution of proceeds of a resolution plan submitted for its consideration, during the corporate insolvency resolution process ("**CIRP**") of a corporate debtor. While as anticipated, the judgment provides much-needed clarity and direction on some long

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standing issues relating to the Insolvency and Bankruptcy Code, 2016 (“**IBC**”), it leaves the stakeholders wanting clarity on some other questions of law, which were raised before the Hon’ble Court, but left to be addressed at another opportunity in future.

This article throws light on some of the key take-aways of the judgment and their potential impact in shaping CIRPs in the future.

Key Takeaways

Commercial wisdom of Committee of Creditors and role of Adjudicating Authority and Appellate Tribunal: The Supreme Court, while reiterating the ‘judicial hands-off’ principle laid down by it in the K Sashidhar v Indian Overseas Bank, has reiterated that it is ultimately the ‘commercial wisdom’ of the CoC which operates to determine the *‘feasibility and viability’* of a resolution plan, which includes in its ambit, all aspects of a resolution plan, including the manner of distribution of proceeds of a resolution plan to different classes and/or sub-classes of creditors. Adding more certainty to the CIRP, the Apex Court has also clarified that it is well within the power of the CoC to not only approve a resolution plan, but to also negotiate and suggest suitable modifications, which may be considered by the resolution applicant while re-submitting the plan for CoC’s consideration.

The Supreme Court, while reiterating the ‘judicial hands-off’ principle laid down by it in the K Sashidhar v Indian Overseas Bank, has reiterated that it is ultimately the ‘commercial wisdom’ of the CoC which operates to determine the ‘feasibility and viability’ of a resolution plan, which includes in its ambit, all aspects of a resolution plan, including the manner of distribution of proceeds of a resolution plan to different classes or sub-classes of creditors

To further aid the primacy of the CoC’s wisdom, the Supreme Court delved into the scope of limited judicial review by the NCLT or the Appellate Tribunal, being National Company Law Appellate Tribunal (“**NCLAT**”) in approving a resolution plan, and has categorically held that the IBC does not allow judicial scrutiny of the justness of the commercial opinion expressed by the CoC at the time of approving or rejecting a resolution plan, and the operation of judicial review is limited to Section 30 (2) of the Code, for the NCLT and Section 32 read with Section 61(3) of the Code, for the NCLAT. Therefore, the limited role of the NCLT, while a plan goes through the muster of its scrutiny, to examine if the CoC has taken into consideration the following key parameters, while approving a resolution plan: (a) maximization of value of the assets of the Corporate Debtor; (b) balancing of interests of all stakeholders including the operational creditors; (c) Corporate debtor being kept as a going concern; and (d) compliance with the provisions of the IBC and the rules and regulations under the IBC (“**Mandatory Conditions**”).

As long as the NCLT is satisfied that the resolution plan addresses these parameters, it is bound to approve the resolution plan and, if at all, it does not see any of these parameters being satisfied, its power is limited to sending the resolution plan back to the CoC for re-submitting the resolution plan, with necessary modifications, which may be made to satisfy these parameters.

Treatment Of Undecided Claims: Putting an end to a long drawn debate on ‘finality of claims’ and upholding the ‘fresh slate’ objective of IBC, the Supreme Court expressly held that a successful resolution applicant cannot suddenly be faced with “undecided” claims after the resolution plan has been approved as such an interpretation, would make cost of acquisition of corporate debtors undergoing CIRP, ‘**uncertain**’. The Supreme Court has categorically held that all claims must be submitted to and decided by the resolution professional during the CIRP, and must be dealt with under the resolution plan so that the resolution applicant knows exactly what has pay to ‘take over and run the business of the corporate debtor’ with a “fresh slate”.

Discharge Of Guarantors And Subrogation Rights: On the issue of whether a guarantor’s right of subrogation against the Corporate Debtor be extinguished under a resolution plan, the Supreme Court observed that Section 31(1) of the IBC makes it clear that once a resolution plan is approved by the CoC, it shall be binding on all stakeholders, including the guarantors. Accordingly, a part of the resolution plan which states that the claims of the guarantor on account of subrogation shall be extinguished, is binding on the guarantors of the Corporate Debtor, including in respect of guarantees furnished by the erstwhile directors of the corporate debtor. However, while this may have been a timely opportunity for the Supreme Court to conclusively decide the impact of full and final settlement of debt of the corporate debtor on the liabilities of its guarantors, particularly in view of the pending litigation on account of invocation of these guarantees provided by the erstwhile promoters of Essar Steel, the Supreme Court limited its observations only to the validity of extinguishment.

Delegations Of Functions To A Sub-Committee: On the issue of whether the powers of the CoC can be sub-delegated to a sub-committee, the Supreme Court observed that the powers of the CoC under section 28(1)(h) of the IBC in respect of matters which have a vital bearing on the running of the business of the corporate debtor, although administrative in nature, cannot be delegated to any other person. Accordingly, the power to approve a resolution plan under section 30(4) of the IBC can be exercised only by the CoC and cannot be delegated to any other body and/or sub-committee. However, the CoC may appoint sub-committees for the purpose of negotiating with resolution applicants, or for the purpose of performing other ministerial or administrative acts, provided such acts are ultimately approved and ratified by the CoC.

Constitutionality of Section 4 of the Amendment Act: The Amendment Act vide Section 4 introduced the second proviso to Section 12(3) to the IBC which set out that a CIRP is required to be mandatorily completed within a period of 330 (three hundred and thirty) days from the insolvency commencement date, including any extension of the period of CIRP and the time taken in legal proceedings in relation to such CIRP.

The constitutionality of Section 4 of the Amendment Act was challenged before the Supreme Court. The Supreme Court has held that time taken in legal proceedings cannot possibly harm a litigant and that a provision of law which seeks to punish a litigant due to genuine judicial delays caused on account of courts/tribunals being unable to take up the matter is violative of Article 14 and 19(1)(g) of the Constitution of India, 1950 ("**Constitution**"). Accordingly, the Supreme Court held that Section 4 of the Amendment Act to the extent it states that the timeline of 330 days mandatory, is unconstitutional. The Supreme Court has held that a CIRP must be "ordinarily" be completed within 330 (three hundred and thirty) days from insolvency commencement date unless extended by the court for sufficient cause such as : (a) the extension being in the interest of all stakeholders that the corporate debtor; (b) time taken in legal proceedings is largely due to factors owing beyond the control of the parties; (c) the delay or a large part thereof being attributable to the tardy process of the Adjudicating Authority and/or the Appellate Tribunal itself.

Constitutionality of Section 6 of the Amendment Act: The Amendment Act, vide Section 6 amended Section 30(2)(b) of the IBC. Pursuant to the amended Section, a resolution plan is required to provide for payment of debts of operational creditors which shall not be less than: (i) the amount to be paid to such creditors in the event of a liquidation of the corporate debtor under section 53; or (ii) the amount that would have been paid to such creditors, if the amount to be distributed under the resolution plan had been distributed in accordance with the order of priority set out in Section 53(1) of the IBC whichever is higher. Further, the resolution plan is required to provide for the payment of debts of dissenting financial creditors a minimum of the amount they would have been paid under Section 53(1) of the IBC.

Upholding the amendment, the Supreme Court held that Section 30(2)(b) is a beneficial provision in favor of the operational creditors and dissenting financial creditors as they are now required to be paid a certain minimum amount under the resolution plan.

Conclusion

Vide this landmark judgment, the Supreme Court ushered in some much-needed clarity into various long debated issues in relation to a CIRP of a corporate debtor. The Essar Judgment is a welcome step towards increasing the efficacy of the IBC and making it an effective legal framework to ensure the maximization of value of the assets of the corporate debtor in an expeditious manner and balance the interests of all the stakeholders involved in the CIRP of a corporate debtor.

Disclaimer – The views expressed in this article are the personal views of the authors and are purely informative in nature.

AMIT SHAH INAUGURATES INDIAN CYBER CRIME COORDINATION CENTRE

Indians can now report cyber crimes online. On January 10, 2020, Union Home Minister Amit Shah inaugurated the state-of-the-art Indian Cyber Crime Co-ordination Centre (I4C) and also the dedicated National Cyber Crime Reporting Portal to the nation, a citizen-centric initiative that will enable citizens to report cyber crimes online.

According to a Home Ministry statement, the portal will let all cyber crime related complaints be accessed by the law enforcement agencies in the States and Union Territories to take action as per the law. At the initiative of the Ministry for Home Affairs (MHA), 15 states and Union Territories (UTs) have consented to set up regional Cyber Crime Co-ordination Centres in their respective regions.

The scheme to set up I4C was approved in October 2018 at an estimated cost of ₹415.86 crore to deal with all types of cybercrimes in a comprehensive and co-ordinated manner. It has seven components viz., National Cyber Crime Threat Analytics Unit, National Cyber Crime Reporting Portal, National Cyber Crime Training Centre, Cyber Crime Ecosystem Management Unit, National Cyber Crime Research and Innovation Centre, National Cyber Crime Forensic Laboratory Ecosystem and Platform for Joint Cyber Crime Investigation Team.

So far, over 700 police districts and 3,900 police stations have been connected with this Portal. After successful completion, this portal can improve the capacity of law enforcement agencies to investigate the cases and will improve success in prosecution. This portal also focuses on specific crimes like financial crime and social media-related crimes like stalking, cyber bullying, etc.

Moreover, according to the MHA press release, this portal will improve co-ordination amongst the law enforcement agencies of different states, districts and police stations for dealing with cyber crimes in a co-ordinated and effective manner. This portal was launched on a pilot basis on 30th August, 2019 and enables filing of all cyber crimes with specific focus on crimes against women and children, particularly child pornography, child sex abuse material, and online content pertaining to rapes/gang rapes, etc.

In future, this portal will provide for chatbots for automated interactive assistance system to the public for guidance on cyber crime prevention and how to report incidents on the portal.

INDIA TO MANDATE CYBER SECURITY MEASURES FOR POWER GRIDS

After the cyber attack on the Kudankulam Nuclear Power Plant last year, the nation wants electricity grid operators to install firewalls and other security measures to avert any attacks on their information technology systems and check rising incidents of hacking incidents into power networks across the world.

Energy networks across the world have been key targets for hackers, prompting governments to take safeguard measures. Grid operators and regulatory agencies will need to have a continuity plan handy in the event of a cyber attack, according to draft rules published by the Central Electricity Regulatory Commission. The move is part of the overhaul of the decade-old guidelines.

The draft report advises central and state transmission utilities and load dispatch centers to ensure protection of sensitive data and identify reserve transmission capacities that can take over in case of a disruption apart from regular monitoring of risks. It also recommends that these bodies

prioritize resources and allocate adequate workforce for online security.

To deal with malware, India protects its central power grid through multiple firewalls and has isolated it from office networks.

According to Communications and Electronics and Information Technology Minister Ravi Shankar Prasad, the country has been a target of cyber attacks, with 529 federal and state government websites being hacked since 2016.

TWO CYBERCRIME UNITS SET UP IN KOZHIKODE

The Kerala Police department conceived a cyber center in the state for giving a boost to cybercrime investigation in north Kerala. Two cybercrime investigation units started functioning in Kozhikode on 4th January 2020. A Cyber Police station and a regional unit of the Cyberdome of the state police were inaugurated by Chief Minister Pinarayi Vijayan. With the opening of the first Cyber Police station in north Kerala, the officials are expecting to bring down the number cyber crime offences reported in the city.

According to the Cyberdome website, software/technology companies are providing their technical expertise and capabilities to assist the police in various fields of cyber security and technology augmentation for effective policing and operate an online office of technical experts, ethical hackers, and competent cyber security professionals, who assist the police in the area of cyber security, cyber crime investigation and domain knowledge updating.

The Cyberdome has several IT and internet security experts besides full time police officers. According to a senior official, apart from cybercrime offenses being reported in Kozhikode, the station will handle cybercrime cases being reported in Kozhikode, Kannur, Wayanad and Kasaragod districts also. The cyber police station will be headed by a Station House Officer.

The special cyber crime investigation team is expected to assist the police in North Kerala to recover scientific evidence using cyber technology. The opening of the Cyberdome in Kozhikode would benefit cyber crime investigation in an effective and speedy manner.

The Cyberdome will focus on cyber security, cyber forensic, cyber intelligence, incident response, research and development and training and awareness creation.

The expert volunteer groups are expected to play a significant role in understanding the identity of the cyber-criminal. The team will also work to tackle emerging cyber security threats. The Chief Minister commissioned the modern police control room in the city through video conference. He also assured that the shadow police system would be strengthened to ensure security to women.

UK MAKES STRICTER LAWS REVOLVING AROUND IoT CYBERSECURITY

The United Kingdom (UK) has tightened laws revolving around Internet of Things (IoT) cyber security to help protect its citizens and businesses from the rising threats posed by cyber criminals and the increasingly targeting IoT devices. Under the proposed measures by the government, all IoT and consumer smart devices will be mandatorily required to adhere to specific security requirements. The proposed measures from the Department for Culture, Media and Sports (DCMS) have been developed in conjunction with the UK's National Cyber Security Centre (NCSC) and is the result of a consultation with information security experts, product manufacturers and retailers and others.

According to Matt Warman, Minister for digital and broadband at DCMS, the new law will hold firms manufacturing and selling internet-connected devices responsible and stop hackers threatening people's privacy and safety. Many connected devices are shipped with simple, default passwords that in most cases cannot be changed, while some IoT product manufacturers often lack a medium to connect to them in case of any vulnerabilities to be reported – especially if that device is produced on the other side of the world.

The new legislation requires that IoT devices must follow three particular rules to be allowed to sell products in the UK. They are –

- All consumer internet-connected device passwords must be unique and not resettable to any universal factory setting
- Manufacturers of consumer IoT devices must provide a public point of contact so anyone can report a vulnerability and it will be acted on in a timely manner
- Manufacturers of such IoT devices must explicitly state the minimum length of time that the device will receive security updates at the point of sale, either in store or online

The new law proposes that if IoT products fail to follow these rules, such devices could potentially be banned from sale in the UK.

In certain cases where IoT products suddenly stop receiving support from manufacturers, providing an exact length of time that devices will be supported will allow users to think about how secure the product will be in the long term.

According to said Nicola Hudson, Policy and Communications Director at the NCSC, development of such legislation to ensure that citizens are better protected is hugely welcomed. On the same lines, ENISA, the European Union's cybersecurity agency, is also working towards legislation in this area, while the US government is also looking to regulate IoT in an effort to protect against cyberattacks.

FOREIGN DECREES PASSED IN UAE CAN NOW BE ENFORCED IN INDIA

The Central Government has issued a notification declaring United Arab Emirates (UAE) to be a reciprocating territory and that foreign civil decrees passed by Courts in the UAE can be effectuated in India in line with Section 44A of the Code of Civil Procedure, 1908 (CPC). Section 44A of the Code of Civil Procedure 1908 speaks about "Execution of decrees passed by Courts in the reciprocating territory". Under section 44A of the CPC, a decree of any of the Superior Courts of any reciprocating territory is executable as a decree passed by the domestic (Indian) Court. Therefore, in case the decree does not pertain to a reciprocating territory or a Superior Court of a reciprocating territory, as notified by the Central Government in the Official Gazette, the decree is not directly executable in India.

Now, after this notification has been passed, decrees passed by Courts in the UAE can now be executed in India, as if they were passed in Indian Civil Courts.

The Central Government has declared the following courts in the UAE to be superior Courts of that territory namely:

Federal Court

(a) Federal Supreme Court;
(b) Federal, First Instance and Appeals Courts in the Emirates of Abu Dhabi, Sharjah, Ajman, Umm Al Quwain and Fujairah.

Local Courts

(a) Abu Dhabi Judicial Department;
(b) Dubai Courts;
(c) Ras Al Khaimah Judicial Department;
(d) Courts of Abu Dhabi Global Markets;
(e) Courts of Dubai International Financial Center.

According to legal experts, this step would deter citizens fleeing to India after committing financial fraud or civil offenses in the UAE. As there is an increase in the number of economic frauds and the cases where such fraudsters generally flee to western or other Middle-East countries after committing such economic frauds, this move by India will be more of a show of bilateral respect of each other's legal system. Legal experts feel that the move by India will also pave the way for implementation of civil verdicts ordered by designated courts in the UAE, through Indian courts.

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA (LIQUIDATION PROCESS) REGULATIONS 2016 AMENDED BY IBBI

The Insolvency and Bankruptcy Board of India (IBBI) notified the Insolvency and Bankruptcy Board of India (Liquidation Process) (Amendment) Regulations, 2020 on 6 January 2020.

According to the amendment, a person, who is not eligible under the Code to submit a resolution plan for insolvency resolution of the corporate debtor, shall not be a party in any manner to such compromise or arrangement of the corporate debtor under section 230 of the Companies Act, 2013.

Further, the amendment states that where a secured creditor proceeds to realize its security interest, it shall pay as much towards the amount payable as it would have shared in case it had relinquished the security interest, to the liquidator within 90 days from the liquidation commencement date; and the excess of the realized value of the asset, which is subject to security interest, over the amount of his claims admitted, to the liquidator within 180 days from the liquidation commencement date.

The amendment provides that a secured creditor, who proceeds to realize its security interest, shall contribute its share of the insolvency resolution process cost, liquidation process cost and workmen's dues, within 90 days of the liquidation commencement date. Where a secured creditor fails to comply, the asset which is subject to security interest, shall become part of the liquidation estate.

The amendment also provides that a liquidator will deposit the amount of unclaimed dividends and undistributed proceeds in a liquidation process along with any income earned into the corporate liquidation account before he submits an application for dissolution of the corporate debtor.

The law makers have also provided for a process for a stakeholder to seek withdrawal from the Corporate Liquidation Account.

SUPERVISORY FRAMEWORK FOR URBAN CO-OPERATIVE BANKS REVISED BY RBI

The Reserve Bank of India (RBI) has decided to rationalize the Supervisory Action Framework (SAF) to make it more effective in bringing about the desired improvement in the Urban Co-operative Banks (UCBs) and also expeditious resolution of UCBs experiencing financial stress.

The revised framework released by the RBI on 6th January 2020 stipulates the thresholds for various parameters that could trigger a corrective action by the UCBs or a supervisory action by the RBI.

According to the RBI website, the central bank will continue to monitor asset quality, profitability and capital / net worth of UCBs under the revised SAF.

The revised SAF envisages initiation of corrective action by the UCB and/or supervisory action by the Reserve Bank on breach of the specified thresholds (triggers) in respect of the specified financial parameters/indicators.

A UCB may be placed under SAF when its Net NPAs exceed 6% of its net advances. Also, any UCB may be placed under SAF when it incurs losses for two consecutive financial years or has accumulated losses on its balance sheet.

A UCB may be placed under SAF when its Capital to Risk-weighted Assets Ratio (CRAR) falls below 9%.

The RBI shall take action such as imposition of all-inclusive directions under section 35A of the Banking Regulation Act, 1949 (as applicable to co-operative societies).

Issue of show cause notice for cancelation of banking license may be considered by the Reserve Bank when continued normal functioning of the UCB is no longer considered to be in the interest of its depositors / public.

SEBI MODIFIES RATING WITHDRAWAL NORMS FOR CRA

The Securities and Exchange Board of India (SEBI) has tightened the noose around corporates, saying if companies are not co-operating with credit rating agencies (CRAs) on disclosure of loan defaults, then the CRAs should issue INC ('Issuer not co-operating') ratings.

"If an issuer has all the outstanding ratings as non-cooperative for more than six months, then the CRA shall downgrade the rating assigned to the instrument of such issuer to non-investment grade with INC status. If non-cooperation by the issuer continues for a further six months from the date of downgrade to non-investment grade, no CRA shall assign any new ratings to such an issuer until the issuer resumes cooperation or the rating is withdraw," the SEBI said in a circular.

CRAs define non-cooperation by issuers as when they don't provide adequate information to conduct a rating exercise or in case of non-payment of fees by the issuer for the review.

The SEBI said if non-cooperation by the issuer continues for another six months from the date of downgrade to non-investment grade, no new ratings to such issuer should be assigned (effective immediately) until the issuer resumes co-operation or the rating is withdrawn.

Last year in November, SEBI had mandated listed companies to make public disclosure on stock exchanges about default in payment of interest obligations on loans,

including revolving facilities like cash credit from banks or financial institutions beyond 30 days.

Companies are also required to disclose default in case of unlisted debt securities such as non convertible debentures within 24 hours from the occurrence of default.

The markets regulator said that in case of multiple ratings on an instrument, where there is no regulatory mandate for multiple ratings, a CRA should withdraw a rating earlier, provided the CRA has rated the instrument continuously for three years or 50% of the tenure of the instrument, whichever is higher and received a no-objection certificate from 75% of bondholders of the outstanding debt for withdrawal of rating.

remand
V. (1) For an appellate court to send a case back to a lower court for reconsideration. (2) To place someone in custody, such as a defendant, while a trial is adjourned. N. remand

remedial
ADJ. Intended to cure or to act as a remedy.

remedy
N. A means of compensating someone for an injury or enforcing a right.

remit
V. (1) To refer a matter to some authority for decision; to send a case back to a lower court. (2) To send money. (3) To cancel a debt; to refrain from punishing someone for a misdeed; to forgive. N. remission.

remitter
N. The process of restoring good title to property to a person who formerly had good title but currently does not.

remittitur
N. The reduction of a jury's excessive verdict or award of damages.

remote cause
N. An action or event that would not necessarily cause a particular result; see also proximate.

remove
V. (1) To take off; to take away; to eliminate. (2) To transfer a lawsuit from one court to another, especially from a state court to a federal one. N. removal.

render
V. (1) To provide something, such as help or payment. (2) To pronounce a judgment on a case or matter, to provide a verdict. some matter. v. To provide an account of an event, either oral or written, based on investigation or observation.

reporter
N. A published volume of cases decided by courts in a particular region or by a particular court; a compilation of decisions by an administrative agency, financial transactions of a company, or other such material; also called reports.

repossess
V. For a lender to take possession of an item or property if the person who borrowed money to purchase it fails to make payments. N. repossession.

represent
V. (1) To act or speak on someone's behalf. (2) To allege or claim that something is the case; to make a statement that allows the listener to form a judgment. N. representation.

representative
N. A person appointed to speak or act on someone else's behalf; an agent; a person who represents a group of people in a legislative body. ADJ. 'Typical of a type or class. See also House of Representatives, personal representative.

reprieve
N. The temporary postponement of a criminal sentence or other unpleasant event. V. reprieve.

reprimand
N. An official rebuke; formal censure of a person administered by his or her superior or by an organization. V. reprimand.

reprisal
N. Retaliation; an act done out of spite or to retaliate for some real or imagined wrong; seizure of people or goods belonging to a foreign nation done as retaliation for sonic wrong.

republic
N. A state or nation in which power is held by the people and their elected representatives, and in which supreme leaders are elected by the people instead of inheriting their positions. ADJ. republican.

republication
N. The reactivation by a testator of a will that he or she has revoked; the revival of a revoked will through a codicil.

Repudiate
V. To deny an obligation or refuse to perform a duty, such as that required by a contract; to deny that something is valid; to refuse to accept something. N. repudiation.

repugnancy
N. Inconsistency between two statements, clauses, allegations, etc.

repugnant
ADJ. Inconsistent; incompatible; contrary.

reputation
N. The opinion about a person held by other people or by the community in general.

res
N. (Latin) Thing; a thing or object; the subject matter of a lawsuit.

rescind
V. To revoke or cancel a contract or agreement. N. rescission.

Mind-Boggling Solutions

Crossword

C	H	A	R	G	E		E	X	T	R	E	M	I	S	T	S
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Y	E	S		A	R	M	S		N		A	R	M	Y		
	S		H		A				T				E		S	
E	S	S	O		N	A	I	L		D	I	G	N	I	T	Y
	M		O		T		N		B			A			A	
	E	X	P	O	S	E	D	T	O	D	A	N	G	E	R	
	N		L				U		L			G		M		
A	T	T	A	C	H	M	E	N	T		H	A	R	A	S	S

Sudoku

7	1	5	8	2	3	9	4	6
4	8	9	6	7	1	2	5	3
3	2	6	5	4	9	1	8	7
6	9	8	7	3	5	4	1	2
2	4	3	9	1	6	5	7	8
5	7	1	2	8	4	6	3	9
9	3	4	1	6	8	7	2	5
1	6	7	3	5	2	8	9	4
8	5	2	4	9	7	3	6	1

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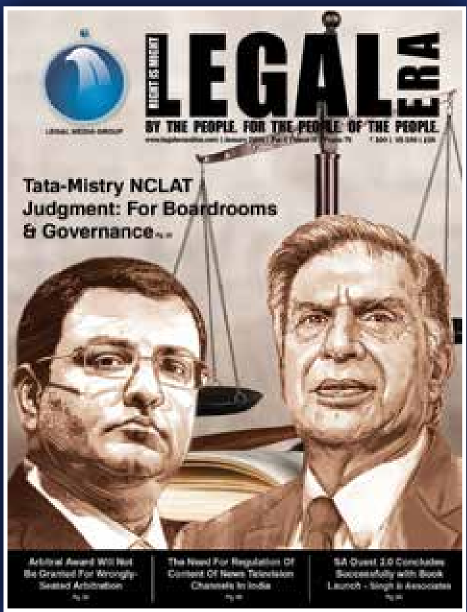

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Job Id: 030117004925

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Job Id: 310317006209

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Job Id: 141119005158

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Job Id: 211019006186

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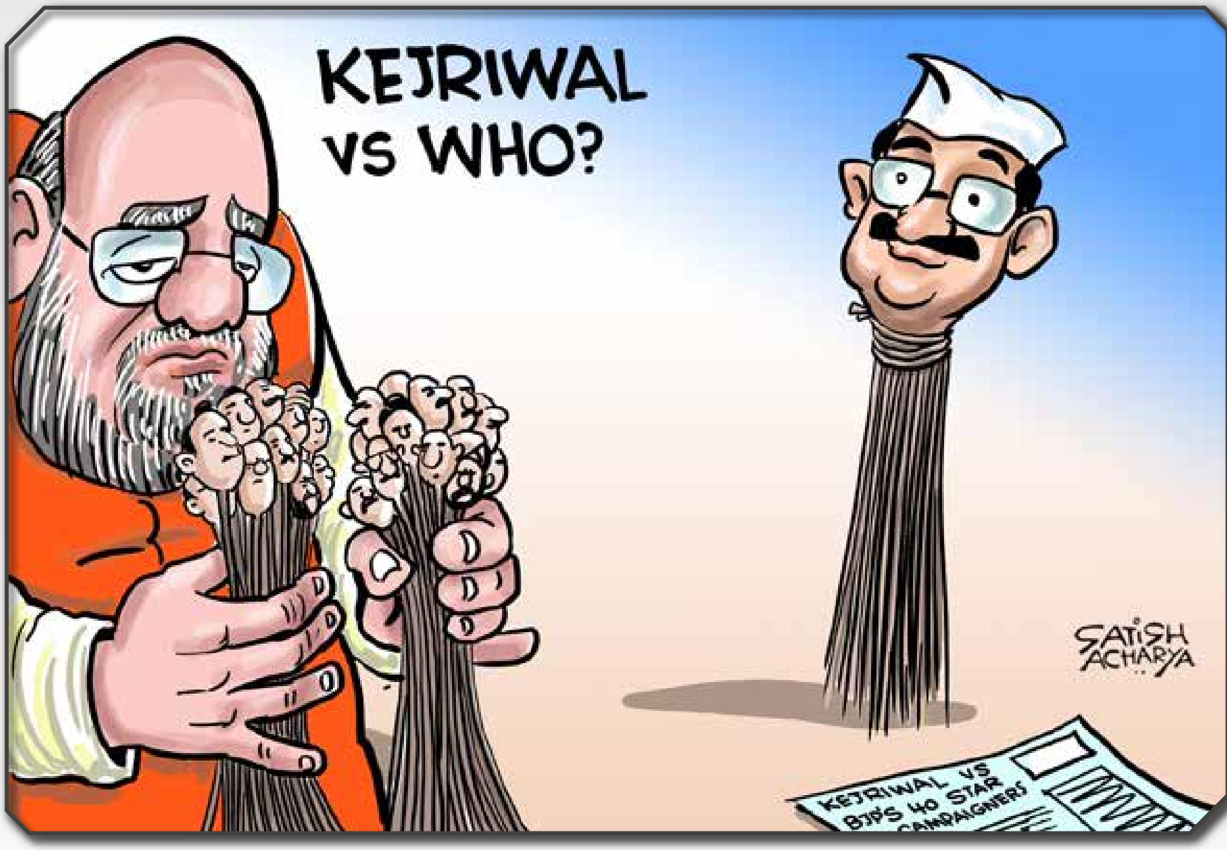
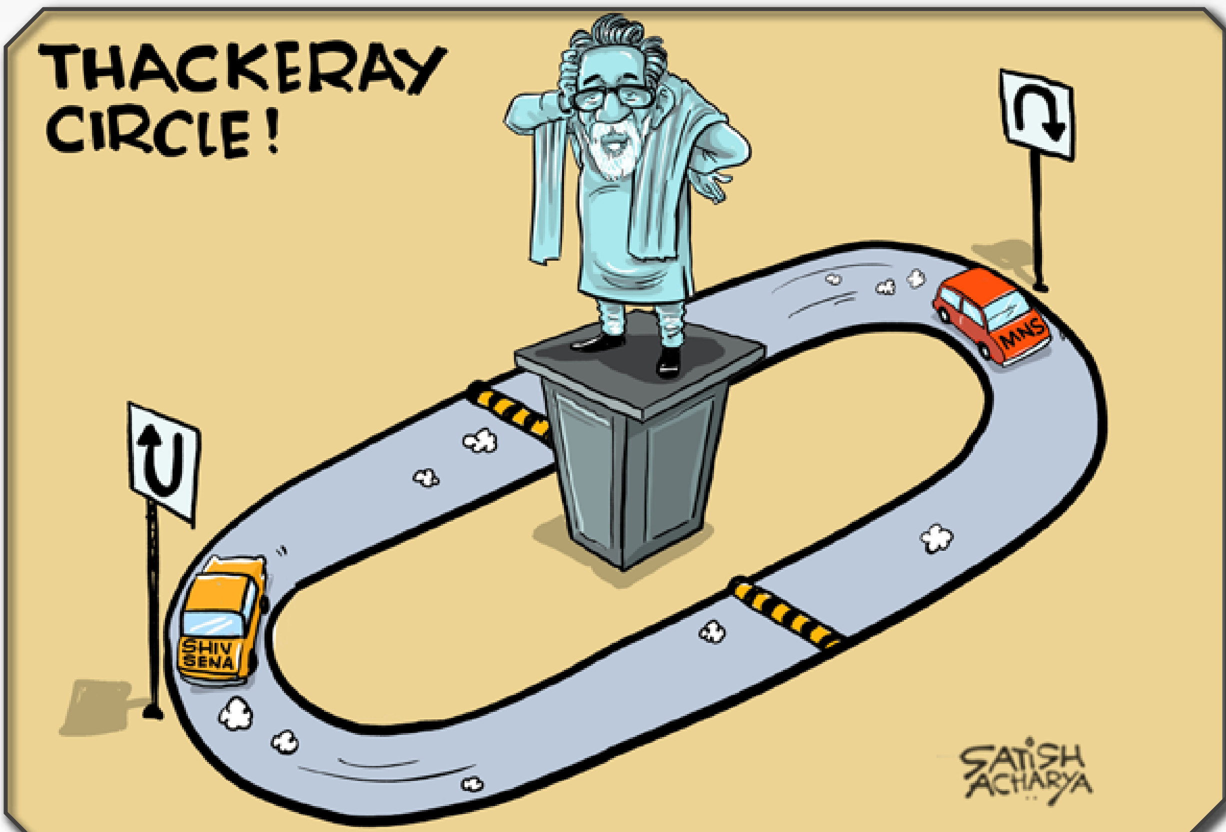
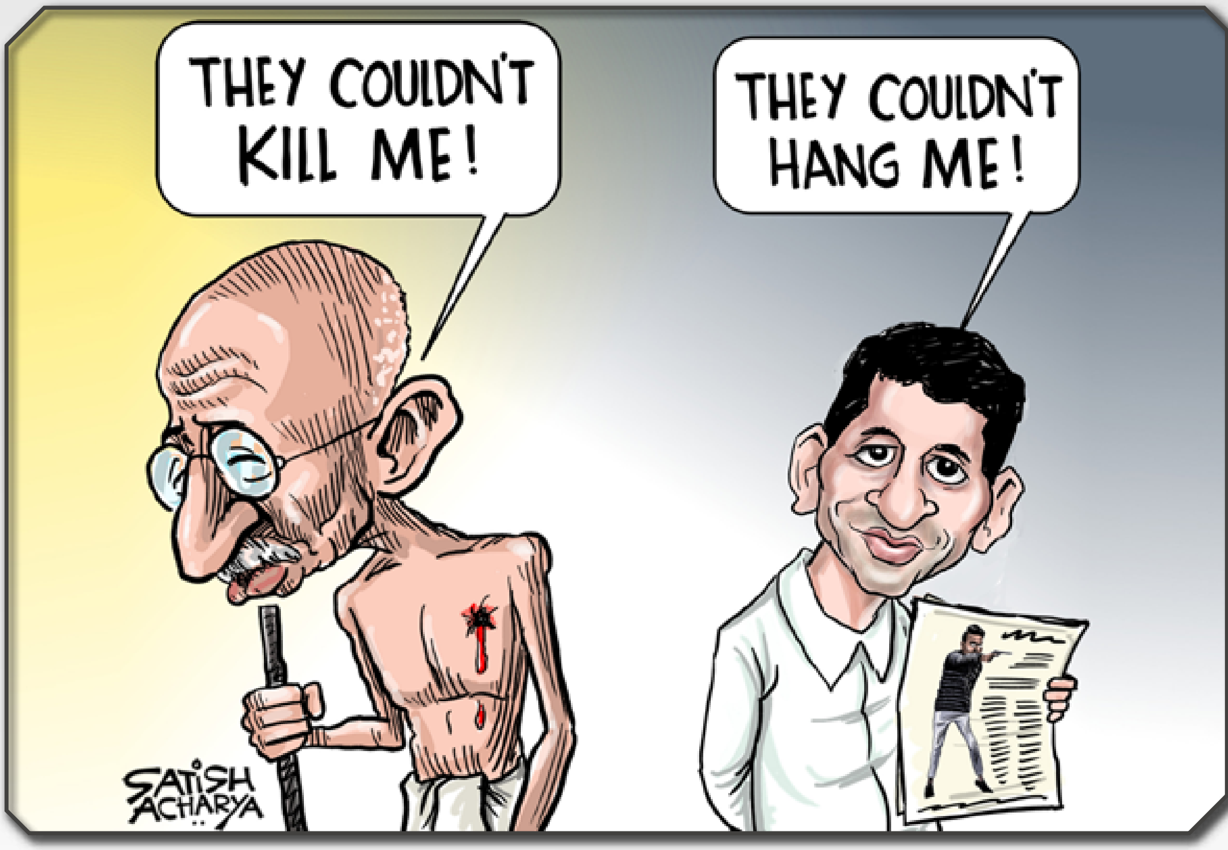
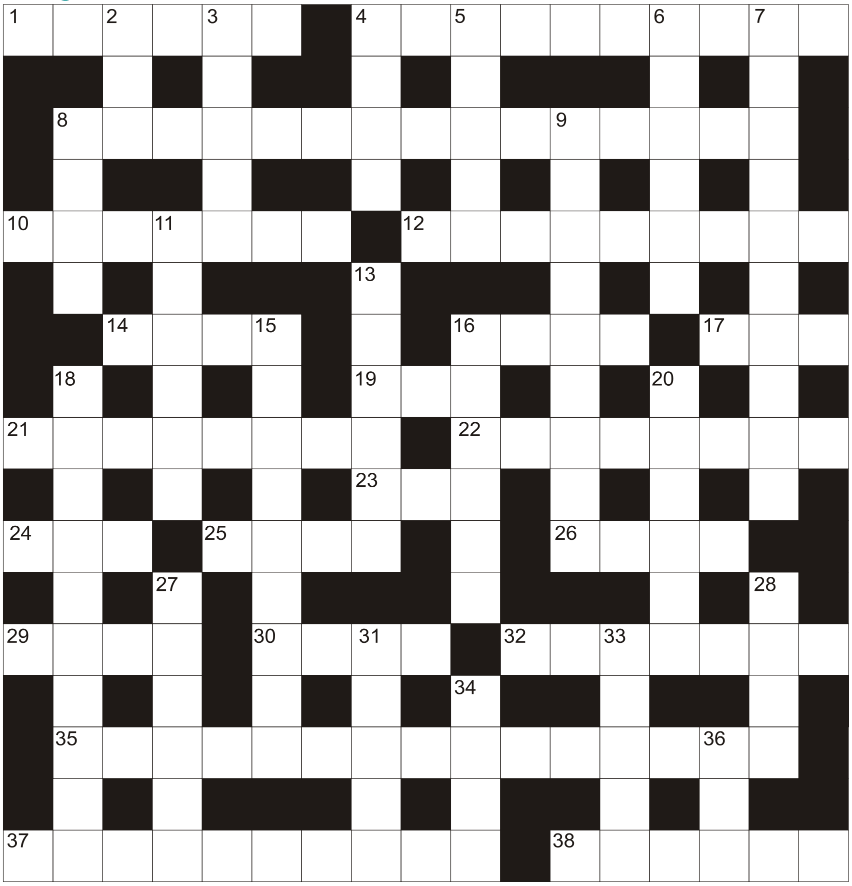

KEJRIWAL VS WHO?
KEJRIWAL VS BJP'S 40 STAR CAMPAIGNERS
SATISH ACHARYA


THACKERAY CIRCLE!
MNS
SHIV SENA
SATISH ACHARYA


THEY COULDN'T KILL ME!
THEY COULDN'T HANG ME!
SATISH ACHARYA


WE NEED FACE RECOGNITION SOFTWARE TO IDENTIFY VIKAS!
SATISH ACHARYA

Legal Crossword



Nitaa Jaggi

ACROSS

1. Put on the cuff (6)
4. Radicals (10)
8. Media event (5,10)
10. Landward claims (2,5)
12. Classified information (9)
14. Court for 1993 bomb blast (4)
16. Police wagons (4)
17. Civil Rights, for one (3)
19. NATO member (3)
21. Barred in court (8)
22. Important raw material in explosives (8)
23. Noted period (3)
24. Pro vote (3)
25. Weaponry (4)
26. 'A' in INA (4)
29. Exxon, once (4)
30. Capture (4)
32. Solemnity (7)
35. Not in a safe place (7,2,6)
37. Legal process of seizing property (10)
38. Give the third degree (6)

DOWN

2. Alternative Dispute Resolution (3)
3. Invigoration (5)
4. They may clash (4)
5. Petty quarrels (5)
6. Disregard (6)
7. Private eye's garment (6,4)
8. ----- slip-walking papers (4)
9. Business tycoon succeeded by Mistry (5,4)
11. Like some collisions (4,2)
13. Avoids (6)
15. Hopefuls (9)
16. Judge not in court (6)
18. Certain tax determinant (10)
20. Insight of a lawyer (6)
27. Commotion (6)
28. Police rank indicator on uniform (4)
31. -- – course (2,3)
33. 'Clean river campaign' for this holy river (5)
34. Escape (4)
36. Exponential Moving Average (3)

Sudoku

					3		4	
			6		1			3
3	2						8	7
	9	8		3	5		1	
				1				
	7		2	8		6	3	
9	3						2	5
1			3		2			
	5		4					

For answers to the Crossword & Sudoku puzzle, turn to Legal Precepts section on page no. 72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