



RGNUL FINANCIAL AND MERCANTILE LAW REVIEW

# AU COURANT

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# PREFACE

It gives us immense joy to share with our readers, the February edition of our monthly newsletter, “Au Courant”.

In this edition, the current on-goings in various fields of law have been analyzed succinctly in the ‘Highlights’ section to provide readers some food for thought. These include brief comments on SEBI’s Recent Direction to Investment Fund Houses to Halt Investing in Overseas Securities, EU’s Initiation of a WTO Dispute Against China Over Telecom Patents, MCA’s Notification of the Limited Liability Partnership (Amendment) Rules, 2022, RBI’s Move to Launch its Digital Currency and ITAT’s ruling that Employee Contribution to Provident Fund (PF)/Employee State Insurance (ESI) before ITR Filing Eligible for Income Tax Deduction.

Major happenings in various fields of law such as Arbitration, Competition, International Trade Law, Securities, Taxation, Intellectual Property, and Technology, Media & Telecommunication have been recorded in the ‘News Updates’ segment to keep the readers abreast of the latest legal developments.

The section ‘Call for Comments’ encourages readers to express their views and concerns on the measures under development and provide critical suggestions on issues that may have a bearing on financial and mercantile laws. Comments are invited by SEBI for feedback on its proposal to Allow FPIs to Participate in Commodity Derivatives Market.

We hope that this Edition of the Au Courant finds you well and is once again an enjoyable and illuminating read for our readers!



# HIGHLIGHTS

## SEBI DIRECTS INVESTMENT FUND HOUSES TO HALT INVESTING IN OVERSEAS SECURITIES



A drastic crash of 26% in Facebook ( or, Meta Platforms) shares after the release of a weak earnings report swabbed \$230 billions of Meta's market capitalisation in one day. While many market experts have remarked it to be a wonderful opportunity for buying, most of the Indian mutual fund investors could not buy them as a result of the January edict from the Association of Mutual Funds of India (AMFI). In order to avoid the breach of industry-wide overseas limits as have been permitted by Reserve Bank of India (RBI), an advisory was issued to inform all asset management Companies (AMCs) to stop subscriptions intending to invest in overseas securities with immediate effect. While the circular issued by SEBI had mandated an immediate stop in all overseas investments, but on account of procedural and back-end issues, the time was extended until 2nd February 2022. While the designated role is for the RBI to set investment limits at the industry level, the SEBI sets them for individual fund houses.

There has been a hike in the demand for mutual funds reaching to almost breaching the limit in January-end to up to 95% . The industry houses are now eagerly waiting for RBI to raise the limit. It has also been reported by senior officials from the Fund Houses that there is no pertinent reason for not raising the limit, but the same is pending solely due to bureaucratic hurdles. The industry officials hope that the limit be increased 2x the current limit to almost \$15 billion.

Given the high returns on global investing, Navi Group and DSP Mutual Fund have resorted to an alternative route and begun investing in foreign exchange-traded funds (ETFs) which provide a separate industry-wide limit of \$1 billion. [Read More](#)

*By Jyoti Jindal, Copy Editor*



# HIGHLIGHTS

## EU LAUNCHES WTO DISPUTE AGAINST CHINA OVER TELECOM PATENTS



The European Union filed a complaint with World Trade Organization claiming that Chinese courts were blocking European firms from defending their communications technology patents. EU enterprises are being discouraged from going to a foreign court to protect their standard-essential patents, according to the European Commission, which launched the challenge on behalf of the EU's 27 members (SEPs). The Commission has also sought input from United States and Japan, whose standard-essential patent holders face comparable issues and who, rather than Beijing, aspire to define global tech standards. In August 2020, China's Supreme People's Court ruled that Chinese courts can use "anti-suit injunction" to prevent patent holders from travelling to a court to assert their patents. The Supreme People's Court further determined that anyone who violates the injunction would be fined €130,000 per day. Since then, four anti-suit injunctions have been issued by Chinese courts against foreign patent holders. The EU has discussed this matter with China several times in the hope of finding a solution, but to no effect. The EU has requested WTO discussions because China's activities, according to the EU, are in violation of the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). The EU's proposal for dispute settlement discussions is the first stage in WTO dispute settlement proceedings. The European body noted that Chinese manufacturers "request these anti-suit injunctions to benefit from cheaper or even free access to European technology. The commission also said that the EU has "raised this issue with China on a number of occasions in an attempt to find a solution, to no avail. As the Chinese actions inconsistent with TRIPS, has requested consultations at the WTO. China currently forbids EU firms with rights to critical technologies such as 4G 5G from defending their patents when they are infringed upon by foreign organizations. Further, the EU claimed that this Chinese policy is particularly harmful to innovation and growth in Europe because it prohibits EU companies from exercising and enforcing the rights that give them a technological advantage. Although the EU has raised this matter with China on multiple instances, no solution has been reached. Since this policy violates the , the EU has requested consultations at the WTO. However, if in 60 days the consultation does not lead to what the European Commission describes as a "satisfactory solution", it will turn to the WTO to set up a panel on the matter. [Read More.](#)

*By Diya Vig, Assitant Editor*



# HIGHLIGHTS

## MCA NOTIFIES LIMITED LIABILITY PARTNERSHIP (AMENDMENT) RULES, 2022



The Ministry of Corporate Affairs (MCA) notified the LLP (Amendment) Rules, 2022, which are to come into effect from 1 April 2022. The new rules provide for the allotment of the new name for the existing LLP, and where an LLP does not change its name within three months, the new name of the LLP will be the combination letters 'ORDNC', year of passing direction, serial numbers, existing LLPIN. The amendments also provide for new rules 37A, 37B, 37C and 37D which provide for the adjudication of LLP penalties. For the same, the Central Government can appoint any officer (not below the rank of Registrar) as adjudicating officer for adjudicating penalty under the LLP Act. Such adjudicating officer can pass an order of penalty against an LLP after sending notice and hearing the concerned person of the LLP. The adjudicating officer will send the order copy to the partner/designated partner of the LLP and the regional director. The LLP however can only pay the penalty through the MCA portal. The LLP may file an appeal within sixty days of passing the order by the adjudicating officer in form 33 LLP, setting forth the appeal grounds. The regional director's office will register the appeal and give a serial number when it is in order. The regional director will notify the adjudicating director against whose order an appeal is filed. He will hear the parties to the appeal and pass an order in writing. The order passed by the regional director will be communicated to the adjudicating officer, the appellant (LLP that files the appeal) and the Central Government.

Moreover, the new rules provide that the Statement of Accounts and Solvency shall be signed on behalf of the LLP by its Designed Partners, but where the Corporate Insolvency Resolution Process has been initiated against the LLP under the Insolvency and Bankruptcy Code, 2016, then the Statement of Accounts and Solvency may be signed on behalf of the LLP by the Interim Resolution Professional/ Resolution Professional/ Liquidator/ Administrator of LLP. Also, the LLP Formation Process has become web-based SPICE+. Some further changes in some forms also made. For instance, Penalties and Compounding of Offences shall be mentioned in Form 11 (Annual Return), Place of maintenance of Accounts other than registered office of LLP can be notified through Form 12. Form 9 has now become web-based and now Form 8 (Statement of Solvency and Annual Return) will specifically include Contingent Liability

*By Srishti Kaushal, Associate Editor*



# HIGHLIGHTS

## RBI TO LAUNCH ITS DIGITAL CURRENCY



Finance Minister Nirmala Sitharaman announced that India will launch Central Bank Digital Currency (CBDC) in the financial year 2022-23 which will be regulated by the Reserve Bank of India. The development has raised excitement as well as some concerns among crypto investors in the country. The finance minister went on to elaborate on how the introduction of CBDC would provide a significant boost to the digital economy.

CBDC is a legal tender issued by the RBI. It is an electronic record or digital token of a country's official currency used to fulfil the basic functions as a regular currency, such as medium of exchange unit of account, store of value, and standard of deferred payment. According to the official RBI announcement, CBDC is the same as currency issued by a central bank but takes a different form and will appear as a liability (currency in circulation) on a central bank's balance sheet. It can be compared to a UPI system where CBDC is transacted instead of bank balances as if cash is handed over.

CBDCs would bring more effectiveness in cross-border transactions. It would be conceivable to pay in digital currency, without the need of an intermediary.

The State Bank of India (SBI) in a research note released after the announcement of Budget 2022 also made some observations about CBDC. It said that the CBDC can offer benefits to users in terms of liquidity, scalability, acceptance, ease of transactions with anonymity and faster settlement. The SBI also said that the digital rupee can be a major push to the government's stress on cashless payments.

The Financial Minister also announced that the income from the transfer of virtual assets at 30%, effectively removing uncertainties about the legal status of such transactions.

The Budget speech also made some other key points crypto assets. The losses from the transfer of digital assets can't be set off against any other income. It was also announced that all crypto transactions will be taxed 1% at the source.

# HIGHLIGHTS

Several countries have already begun the trials of the central bank's digital currency. China has already begun trials of its central bank digital currency in several cities and even plans to roll out its digital yuan for use by athletes and spectators at the Beijing Winter Olympics starting this week. The U.S. Federal Reserve and Bank of England are also looking into possibilities for their economies. [Read More](#)

By *Vansh Bhatnagar, Junior Editor*



# HIGHLIGHTS

## EMPLOYEE CONTRIBUTION TO PROVIDENT FUND (PF)/EMPLOYEE STATE INSURANCE (ESI) BEFORE ITR FILING ELIGIBLE FOR INCOME TAX DEDUCTION: ITAT



Recently the Bangalore Bench of Income Tax Appellate Tribunal (ITAT) has ruled that an Employee contribution to Provident Fund (PF)/Employee State Insurance (ESI) before ITR filing is eligible for income tax deduction. The single-member bench of Vice President, N.V. Vasudevan after taking into consideration the decision of the Karnataka High Court in the case of *M/s Essae Teraoka (P.) Ltd vs DCIT* stated that employee's contribution under section 36(1)(va) of the Income Tax Act would also be covered under section 43B. Therefore, if the employee's share of contribution is made on or before the due date for furnishing the return of income under section 139(1), then the assessee would be entitled to claim a deduction.

In this case, the assessee, B. R. S. Precision Manufacturing Private Limited is a Private Limited Company. The assessee filed a return of income for the assessment year 2018-19 declaring a total income of Rs. "NIL". In an intimation dated October 16, 2019, issued under section 143(1) of the Income Tax Act, the Centralized Processing Centre (CPC) added a sum of Rs. 11,81,345/- representing employees' share of contribution to ESI to the extent not paid on or before the due date as mentioned in Sec 36(1)(va) of the Income-tax Act 1961. It was the case of the assessee that employees' share of ESI has been paid before the due date for filing of return under section 139(1) of the Act.

According to the (A), under newly inserted Explanation 2 to clause (va) of sub-section (1) of section 36, the provisions of section 43B shall not apply and shall be deemed never to have been applied to determine the "due date" under the said clause. The CIT(A) also held that Section 43B of the Income-tax Act relates to allowing certain deductions only on actual payments. The CIT(A) held that the amendment to section 36(1)(va) by insertion of explanation 2 and the amendment to section 43B by insertion to explanation 5 by the Finance Bill 2021 was only declaratory/clarificatory and therefore, was applicable with retrospective effect by necessary intendment of deeming nature expressly stated therein. The CIT(A) upheld the addition made by the AO.

# HIGHLIGHTS

The issue raised was whether the amendment to the provisions section 43B and 36(1)(va) of the Act by the Finance Act, 2021, has to be construed as retrospective and applicable for the period before April 1, 2021, also. The ITAT noted that there is no dispute that the assessee made payment of the Employee share of PF/ESI on or before the due date filing return of income for Academic Year 2017-18 under section 139(1) of the Act. The Tribunal held that the explanatory memorandum to the Finance Act, 2021 proposing amendment in section 36(1)(va) as well as section 43B is applicable only from April 1, 2021. [Read More](#)

*By Raghav Sehgal, Copy Editor*





## NEWS UPDATES

# ALTERNATIVE DISPUTE RESOLUTION

### 1. U/S 34 COURT CAN REMAND MATTER TO THE SAME ARBITRATOR IF BOTH THE PARTIES CONSENTED: SC

In the case of *Mutha Construction v. Strategic Brand Solutions (I) Pvt. Ltd.*, the Supreme Court observed that the principle that a court while deciding a petition under Section 34 of the Arbitration and Conciliation Act 1996 has no jurisdiction to remand the matter to the Arbitrator for a fresh decision is applicable only when the said petition is decided on merits and will not be applicable when both the parties agreed to set aside the award and to remit the matter to the Arbitrator for 'fresh reasoned award'. The Court further added that even in a case where the award is set aside on other grounds, the parties can still agree for the fresh arbitration by the same Arbitrator and hence, upheld the decision of the Bombay High Court. [Read More.](#)

### 2. PIECEMEAL OBJECTIONS CANNOT BE PERMITTED U/S 48 OF THE ARBITRATION ACT: DELHI HC

In the case of *TAQA India Power Ventures Private Limited & Anr. v. NCC Infrastructure Holdings Limited*, the High Court of Delhi held that objections against enforcement of an arbitral award under Section 48 of the Arbitration and Conciliation Act, 1996 cannot be permitted in a piecemeal manner. The Court also observed that the provisions of Section 48 do not envisage piecemeal consideration of the issue of maintainability of the execution case concerning foreign awards and the issue of enforceability thereof. The Court, therefore, remarking that there is no ground to grant further time to the respondent to file any objection on merits but in the interest of justice, permitted the same albeit on payment of cost of INR 1,00,000 to the Delhi High Court Legal Services Committee. [Read More.](#)

### 3. COURTS MUST BE CONSCIOUS OF POWER OF ARBITRAL TRIBUNAL WHILE EXERCISING DISCRETION: GUJARAT HC

In the case of *Essar Bulk Terminal Limited v. Arcelor Mittal Nippon Steel India*, the High Court of Gujarat held that courts must be conscious of the power of arbitral tribunal while exercising discretion under Section 9 of the Arbitration and Conciliation Act, 1996. The Court observed that Section 9 of the Act envisages 'interim measures' and therefore, the exercise of jurisdiction must be in the nature of 'interim measures.' The Court further added that once jurisdiction under Section 9 is invoked and the remedy is exhausted, similar interim measures cannot be claimed by a party before the arbitral tribunal under sub-section (2) of Section 17 of the Act as this may give rise to two orders simultaneously in respect of the same cause of action- one by the court and another by the arbitral tribunal. [Read More.](#)

### 4. TELEGRAPH ACT DOES NOT OUST THE RIGHT TO SUE TELECOMS UNDER CONSUMER PROTECTION ACT: SC

In the case of *Vodafone Idea Cellular Ltd v. Ajay Kumar Agarwal*, the Supreme Court observed that it is well within the jurisdiction of the Consumer Forum to entertain complaints against Telecom Companies and that Section 7B of the Indian Telegraph Act, 1885 which provides for Arbitration remedy does not oust the consumer's right to sue them under Consumer Protection Act, 2019. The Court also referred to the case of *M/s. Emaar MGF Land Ltd. v. Aftab Singh* in which it was held that an arbitration agreement governed by the Arbitration and Conciliation Act, 1996 will not depose the Consumer Forum to entertain a complaint of deficiency of goods or services. The Court further noted that the District Forum is entrusted with the jurisdiction to entertain all complaints where the value of goods or services and the compensation claimed do not exceed the stipulated threshold. [Read More.](#)

*By Ananya Banerjee, Assistant Editor*





## NEWS UPDATES

# BANKING & FINANCE

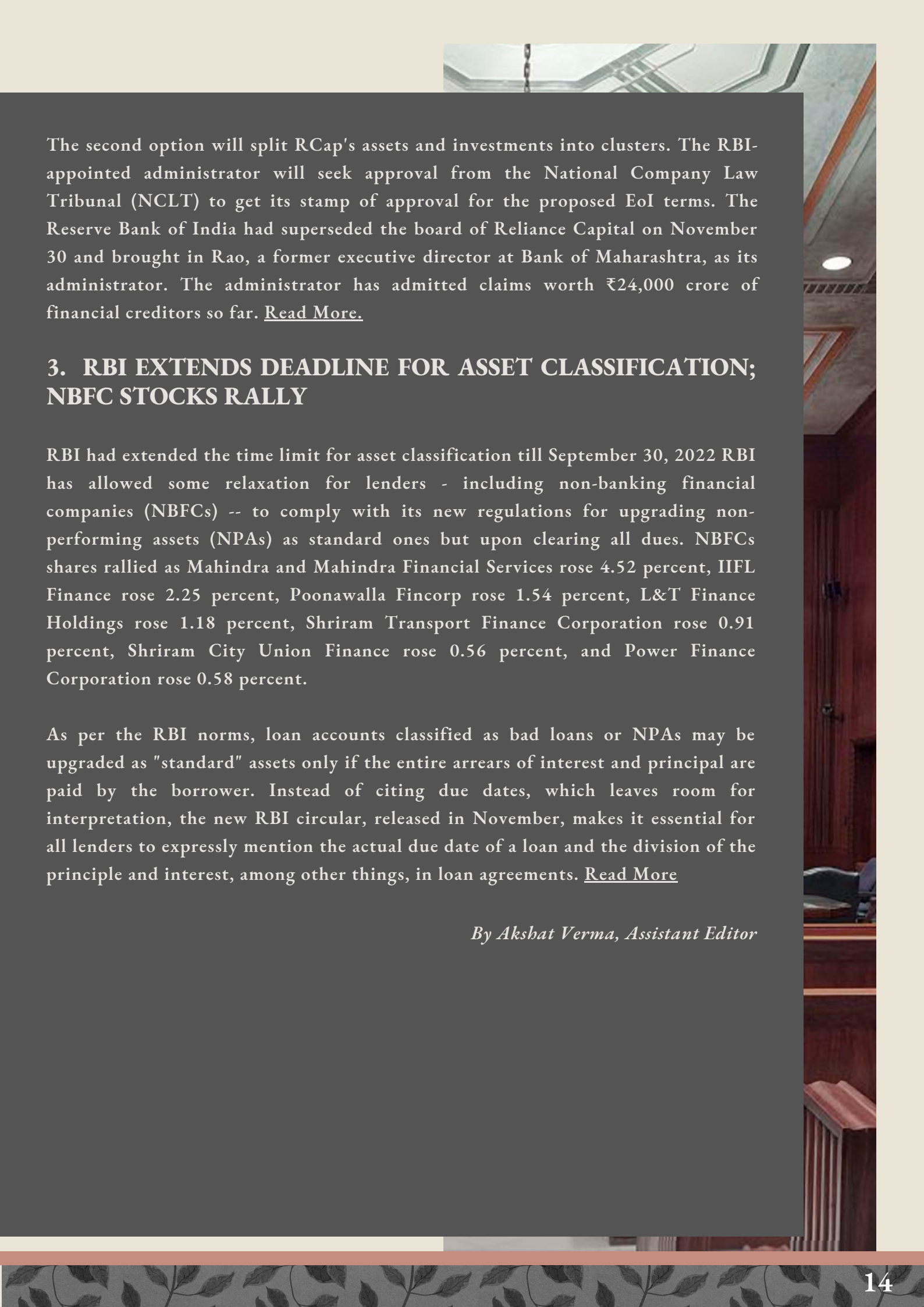
### 1. RBI ASKS NBFCs TO IMPLEMENT CORE FINANCIAL SERVICES SOLUTION BY SEPTEMBER 2025

The Reserve Bank of India (RBI) directed certain non-banking financial companies (NBFCs) to deploy the 'Core Financial Services Solution (CFSS)' by September 30, 2025 in order to create a unified consumer experience and a centralised data base. RBI said in a circular that as of October 1, 2022, NBFCs - Middle Layer and NBFCs - Upper Layer with 10 or more 'fixed point service delivery units' will be obliged to implement CFSS. CFSS is akin to the Core Banking Solution (CBS) adopted by banks.

The circular said that CFSS shall provide for seamless customer interface in digital offerings and transactions relating to products and services with anywhere/ anytime facility, enable integration of NBFCs' functions, provide centralised database and accounting records, and generate suitable MIS, both for internal purposes and regulatory reporting. [Read More.](#)

### 2. RELIANCE CAPITAL'S LENDERS REACH AGREEMENT ON EOI DOCUMENT FOR BIDDERS

According to persons briefed on the situation, Reliance Capital's (RCap) lenders have reached an agreement on an Expression of Interest (EoI) document to be published by the company's administrator to prospective bidders. It's possible that the EoI will be ready by Friday. The lenders, at a meeting on Tuesday, decided to give potential buyers two options to bid for the company. Under the first, potential buyers will be allowed to bid for the company, including RCap's lending book, its subsidiaries and investments in joint ventures.



The second option will split RCap's assets and investments into clusters. The RBI-appointed administrator will seek approval from the National Company Law Tribunal (NCLT) to get its stamp of approval for the proposed EoI terms. The Reserve Bank of India had superseded the board of Reliance Capital on November 30 and brought in Rao, a former executive director at Bank of Maharashtra, as its administrator. The administrator has admitted claims worth ₹24,000 crore of financial creditors so far. [Read More.](#)

### 3. RBI EXTENDS DEADLINE FOR ASSET CLASSIFICATION; NBFC STOCKS RALLY

RBI had extended the time limit for asset classification till September 30, 2022. RBI has allowed some relaxation for lenders - including non-banking financial companies (NBFCs) -- to comply with its new regulations for upgrading non-performing assets (NPAs) as standard ones but upon clearing all dues. NBFCs shares rallied as Mahindra and Mahindra Financial Services rose 4.52 percent, IIFL Finance rose 2.25 percent, Poonawalla Fincorp rose 1.54 percent, L&T Finance Holdings rose 1.18 percent, Shriram Transport Finance Corporation rose 0.91 percent, Shriram City Union Finance rose 0.56 percent, and Power Finance Corporation rose 0.58 percent.

As per the RBI norms, loan accounts classified as bad loans or NPAs may be upgraded as "standard" assets only if the entire arrears of interest and principal are paid by the borrower. Instead of citing due dates, which leaves room for interpretation, the new RBI circular, released in November, makes it essential for all lenders to expressly mention the actual due date of a loan and the division of the principle and interest, among other things, in loan agreements. [Read More](#)

*By Akshat Verma, Assistant Editor*





## NEWS UPDATES

# COMPETITION LAW

### 1. CCI FINDS SEVEN ENTITIES GUILTY OF RIGGING IN SBI TENDER

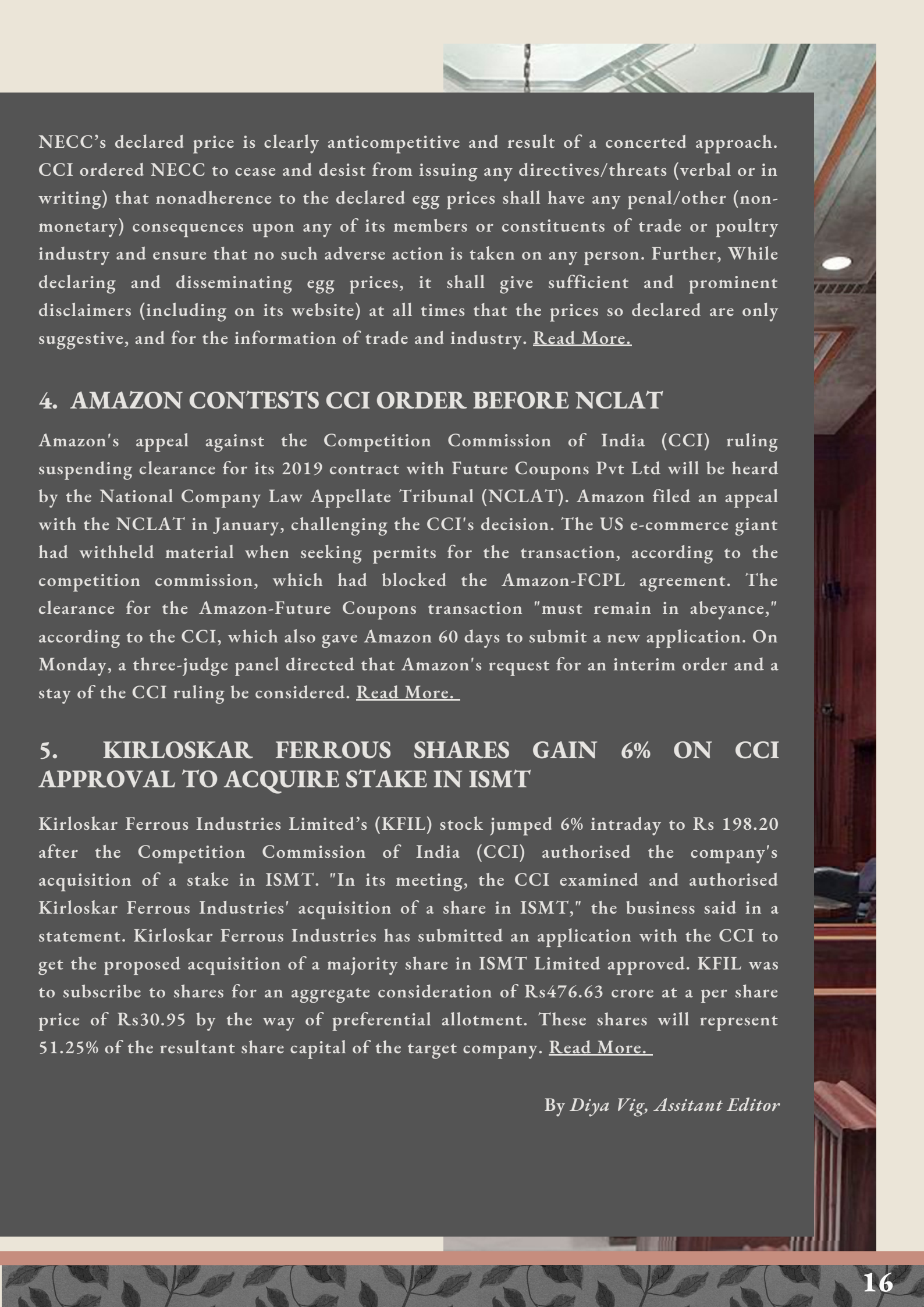
The Competition Commission of India (CCI) has found seven firms guilty of bid rigging in a tender issued by a subsidiary of State Bank of India (SBI) and has directed them to stop engaging in such anti-competitive behaviour. The tender was for the procurement of signs for Sbranches, offices, and automated teller machines. The CCI began its investigation after receiving a complaint in 2018 claiming bid manipulation and cartelization in a tender issued by SBI Infra Management Solutions Pvt. Ltd. The examination discovered e-mails sent between the parties that were used to manipulate the bidding process. [Read More.](#)

### 2. CCI IMPOSES HEFTY PENALTY ON TYRE MANUFACTURERS

The Competition Commission of India (CCI), India's anti-monopoly watchdog, has fined five tyre businesses a total of Rs 1,788 crore for illegal cartelization. Apollo Tyres Ltd, MRF Ltd, CEAT Ltd, JK Tyre & Industries Ltd, and Birla Tyres Ltd are among the five tyre businesses. The Automotive Tyre Manufacturers Association (ATMA) has also been fined by the fair-trade regulator for engaging in cartelization by acting in concert to raise the prices of cross-ply/bias tyres variants sold by each of them in the replacement market, as well as to limit and control production and supply in that market. The Commission noticed that tyre manufacturers had shared price-sensitive data and made collective decisions on the platform of their trade organisation ATMA. [Read More.](#)

### 3. CCI ADMONISHES AND RESTRAINS NECC FROM FIXING EGG PRICES IN INDIA

CCI found National Egg Co-ordination Committee (NECC) guilty of violating the provisions of Section 3(3)(a) read with Section 3(1) of the Competition Act, 2002 ("Act") by its conduct of enforcing/seeking to enforce its declared prices of eggs. While farmers may have the benefit of price information but to force them to sell at a



NECC's declared price is clearly anticompetitive and result of a concerted approach. CCI ordered NECC to cease and desist from issuing any directives/threats (verbal or in writing) that nonadherence to the declared egg prices shall have any penal/other (non-monetary) consequences upon any of its members or constituents of trade or poultry industry and ensure that no such adverse action is taken on any person. Further, While declaring and disseminating egg prices, it shall give sufficient and prominent disclaimers (including on its website) at all times that the prices so declared are only suggestive, and for the information of trade and industry. [Read More.](#)

#### **4. AMAZON CONTESTS CCI ORDER BEFORE NCLAT**

Amazon's appeal against the Competition Commission of India (CCI) ruling suspending clearance for its 2019 contract with Future Coupons Pvt Ltd will be heard by the National Company Law Appellate Tribunal (NCLAT). Amazon filed an appeal with the NCLAT in January, challenging the CCI's decision. The US e-commerce giant had withheld material when seeking permits for the transaction, according to the competition commission, which had blocked the Amazon-FCPL agreement. The clearance for the Amazon-Future Coupons transaction "must remain in abeyance," according to the CCI, which also gave Amazon 60 days to submit a new application. On Monday, a three-judge panel directed that Amazon's request for an interim order and a stay of the CCI ruling be considered. [Read More.](#)

#### **5. KIRLOSKAR FERROUS SHARES GAIN 6% ON CCI APPROVAL TO ACQUIRE STAKE IN ISMT**

Kirloskar Ferrous Industries Limited's (KFIL) stock jumped 6% intraday to Rs 198.20 after the Competition Commission of India (CCI) authorised the company's acquisition of a stake in ISMT. "In its meeting, the CCI examined and authorised Kirloskar Ferrous Industries' acquisition of a share in ISMT," the business said in a statement. Kirloskar Ferrous Industries has submitted an application with the CCI to get the proposed acquisition of a majority share in ISMT Limited approved. KFIL was to subscribe to shares for an aggregate consideration of Rs476.63 crore at a per share price of Rs30.95 by the way of preferential allotment. These shares will represent 51.25% of the resultant share capital of the target company. [Read More.](#)

*By Diya Vig, Assitant Editor*



## NEWS UPDATES

# INSOLVENCY LAW

### 1. NCLT DIRECTS MIAL TO GIVE ACCESS TO JET AIRWAYS EMPLOYEES TO ITS HANGAR

The National Company Law Tribunal (NCLT) has temporarily restrained Mumbai International Airport Ltd (MIAL) from removing Jet Airways' assets from the airport's premises, including its hangar, and ordered MIAL not to deny the airline's representative access to the premises. After MIAL forced the grounded airline to evacuate its properties, including a hangar, and then barred its workmen and representatives from accessing the same, Jet Airways' monitoring committee (MC) sought the intervention of the tribunal. "We restrain respondent (MIAL) from removing applicant's assets from its premises including MIAL Hangar and not to deny access to the applicant's representatives, workmen, nominees, etc. till the adjourned date," said an NCLT bench of Justice PN Deshmukh and technical member KK Vohra in an order on February 9. The tribunal will hear the matter further on March 4. [Read More.](#)

### 2. ZEE ASKS NCLT TO DISMISS INDUSIND'S INSOLVENCY PLEA

Zee Entertainment Enterprises (Zee) has filed an application in the Mumbai bench of the National Company Law Tribunal (NCLT), seeking dismissal of IndusInd Bank's insolvency petition against the company. The homegrown entertainment firm said in a disclosure to stock exchanges that it has filed an interlocutory application before the NCLT for dismissal of IndusInd Bank's petition under Section 7 of the Insolvency and Bankruptcy Code, 2016. Zee said it is seeking an "outright dismissal/rejection" of the petition at the threshold inter alia on the ground that "filing of the said company petition by IndusInd Bank is an act in breach/violation" of the orders dated February 25, 2021, and December 3, 2021, passed by the Delhi High Court in proceedings instituted by the company against the private bank.

Zee said the issue of its alleged default under the DSRA Guarantee Agreement was sub-judice before the Delhi High Court. This comes at a time when Zee has entered into a pact with Sony Pictures for a merger and is also embroiled in a legal tussle with its largest shareholder Invesco at multiple judicial forums.



### 3. NCLAT ALLOWS RELIANCE ARC PLEA TO START INSOLVENCY AGAINST NARENDRA PLASTICS

On Tuesday, the National Company Law Appellate Tribunal overturned an NCLT judgement that rejected Reliance Asset Reconstruction Company Ltd's (RARCL) plea to file an insolvency petition against Narendra Plastics. The NCLAT also ordered the NCLT to file an insolvency petition against the corporation. The NCLT had said the RARCL's plea was barred under limitations as it was filed beyond the prescribed limit of three years after default. The tribunal had said the RARCL had filed a petition under section 7 of the Insolvency & Bankruptcy Code on May 8, 2019, while Narendra Plastics' account was declared as NPA on June 30, 2014, which was prima facie filed after more than five years. This was challenged by RARCL, which is registered as a securitization and reconstruction company, before the appellate tribunal contending that it was within the limitation period. [Read More.](#)

*By Akshat Verma, Assistant Editor*



## NEWS UPDATES

# INTERNATIONAL TRADE LAW

### 1. US POLITICIANS CALL FOR TRADE ACTION AGAINST RUSSIA IN WTO

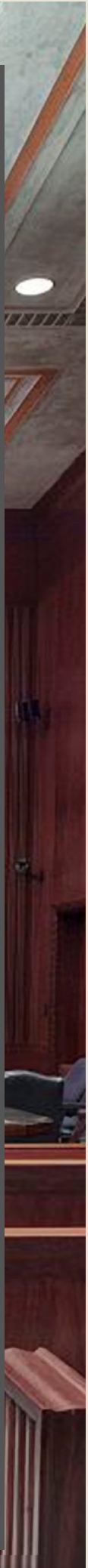
US legislators declared that they will introduce legislation to suspend World Trade Organization conditions in US-Russia trade and pursue Russia's expulsion from the WTO. In the US Senate, at least three comparable legislation have been offered. Meanwhile, Ukraine and Canada have taken WTO action against Russia, and the EU has stated that it is contemplating taking similar measures. In addition to the commercial, financial, and personal penalties that the US and its allies have already implemented, the Doggett and Blumenauer measure would make it simpler for the US to enforce trade restrictions against Russian products. This includes additional EU trade sanctions against Belarus, a non-WTO member. [Read More.](#)

### 2. RUSSIA BANS FOREIGN SECURITIES SALES TO STEM CAPITAL FLIGHT

As part of its efforts to restrict the flow of money out of the nation following the invasion of Ukraine, Russia's central bank has barred foreign investors from selling Russian assets and ordered the Moscow stock market to remain closed. In a brief statement, the Bank of Russia stated that it "temporarily prohibits brokers from selling assets on behalf of non-residents" on the Moscow Exchange. Since the invasion, the Ruble and Russian stock prices have fallen, and a series of Western financial penalties have been imposed in the last week. [Read More.](#)

### 3. UK AND NEW ZEALAND FILE FREE TRADE DEAL

Britain and New Zealand struck a free trade agreement that, according to the UK government, would increase bilateral commerce by 60% by eliminating tariffs, reducing red tape, and allowing professional employees to migrate freely. The pact, which was signed in principle in October comes on the heels of a similar agreement with Australia was greeted positively by most business leaders, but the National Farmers



' Union (NFU) argued it will result in unfair competition in their industry. In 2020, the two nations' trade was valued £2.3 billion. When the in-principle agreement was revealed last year, New Zealand estimated that it would enhance its GDP by over £500 million. [Read More.](#)

#### 4. US SANCTIONS RUSSIAN BANKS, TECH EXPORTS POST INVASION

President Joe Biden imposed fresh sanctions and export curbs on its "premeditated attack" on Ukraine, including penalties on its top banks and substantial limits on semiconductor and other high-tech exports. According to the US Department of the Treasury, sanctions are intended at big Russian financial institutions, which account for approximately 80% of all banking assets in the nation. Biden announced the sanctions after Russia launched an unprovoked "brutal assault" on Ukraine, ignoring "good faith" international attempts to resolve Russia's alleged security concerns about a Ukraine strike. [Read More.](#)

*By Diya Vig, Assitant Editor*





## NEWS UPDATES

# INTELLECTUAL PROPERTY RIGHTS (IPR)

### 1. DELHI HIGH COURT NOTIFIES RULES GOVERNING PATENT SUITS AND INTELLECTUAL PROPERTY RIGHTS DIVISION RULES 2022

The Delhi High Court has notified the High Court of Delhi Rules Governing Patent Suits, 2022 and Delhi High Court Intellectual Property Rights Division Rules, 2022 in the exercise of the powers conferred by Section 7 of the Delhi High Court Act, 1966; Section 129 of the Code of Civil Procedure, 1908; Patents Act 1970; and powers conferred under the various Intellectual Property statutes as amended by the Tribunal Reforms Act, 2021. The Rules, forty in number are made for the matters listed before High Court's Intellectual Property Division (IPD) with respect to practice and procedure for the exercise of its original and appellate jurisdiction, and for other miscellaneous petitions arising out of IPR and related statutes. [Read More.](#)

### 2. DELHI HIGH COURT GRANTS INTERIM PROTECTION TO OWNER OF “BAAZI” GAMES

In the case of Moonshine Technology (P) Ltd. v. Tictok Skill Games (P) Ltd., the High Court of Delhi granted an ad-interim injunction against the defendants under Order XXXIX Rules 1 and 2 read with Section 151 of the Code of Civil Procedure, 1908 for unjustifiably using the trademarked word “Baazi” for its gaming services that caused ‘irreparable injury’ to the plaintiff. For ‘balance of convenience’ and as per the provisions of Section 28 and 29 of the Trademarks Act, 1999, the Court held that once it is found that the defendant’s trademark is identical with the plaintiff’s registered trademark, the Court cannot enquire whether the infringement is such as is likely to deceive or cause confusion and in an infringement action, an injunction is issued as soon as it is proved that the defendant is improperly using the trademark of the plaintiff. [Read More.](#)



### 3. GOOD-FAITH MISTAKES OF LAW WILL NOT INVALIDATE COPYRIGHT REGISTRATIONS

In the case of *Unicolors, Inc. v. H&M Hennes&Mauritz*, the Supreme Court of the United States ruled that good-faith mistakes of law will not invalidate otherwise valid copyright registrations. The Court held that Section 411(b) of the Copyright Act does not distinguish between good-faith mistakes of law from those of fact and a lack of either factual or legal knowledge may excuse an inaccuracy in copyright registration. In order to make copyright protection more accessible to non-lawyer creators and close existing ‘loopholes’ in copyright filings, the Court held that the decision shall facilitate creators and copyright owners to protect their works without fear against potential infringers who use good-faith mistakes regarding esoteric aspects of the copyright registration process as a shield. [Read More.](#)

*By Ananya Bannerjee, Assistant Editor*



## NEWS UPDATES

# MERGERS AND ACQUISITIONS

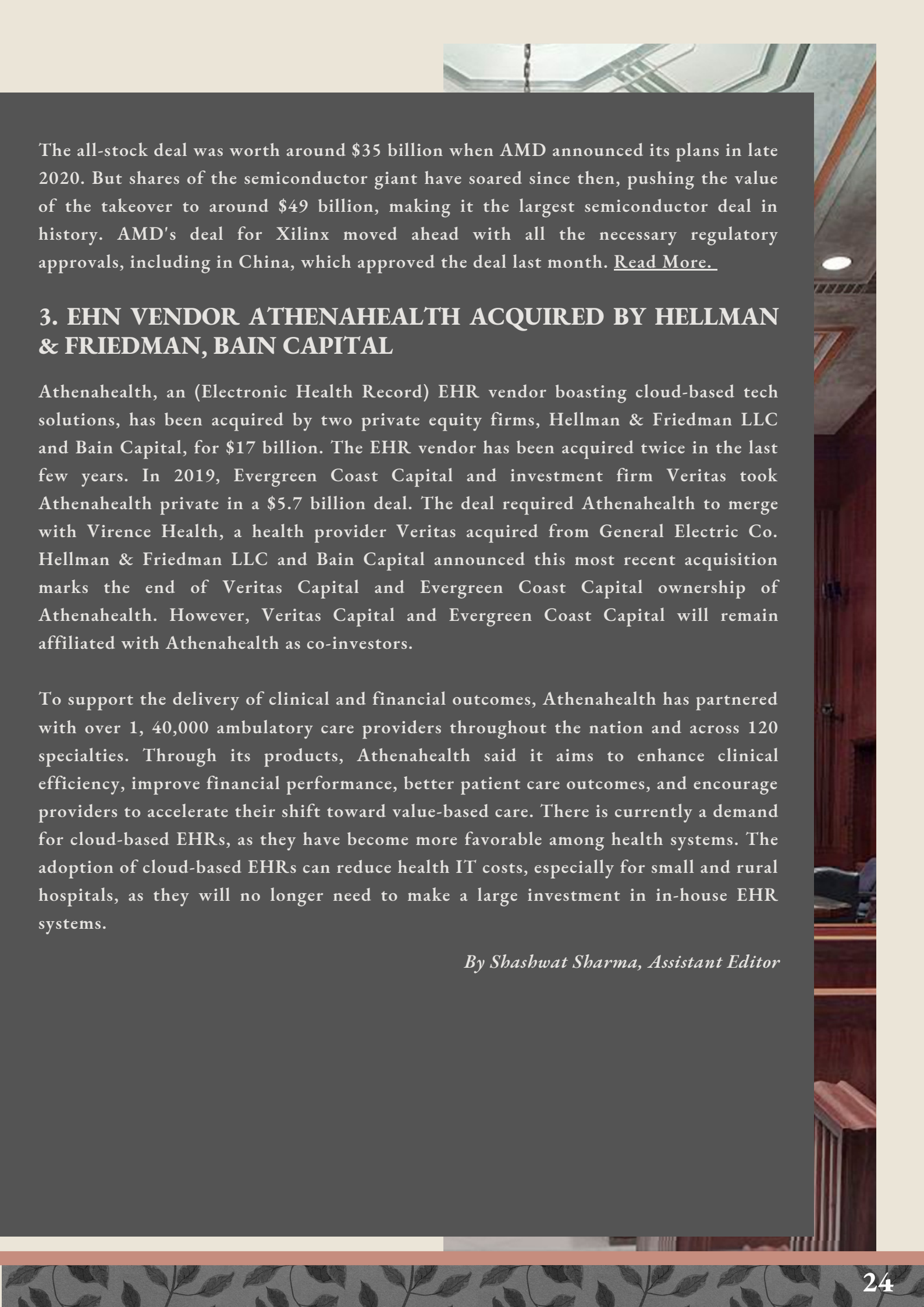
### 1. CREDAVENUE ACQUIRES MAJORITY STAKE IN DEBT RECOVERY PLATFORM SPOCTO

CredAvenue has acquired a 75.1% stake in a Mumbai based Spocto solutions, an artificial intelligence and machine learning powered debt recovery platform to extend an additional feature to its client banks and institutions besides providing a marketplace. CredAvenue's platform essentially serves as an infrastructure for enterprises and lenders to discover and execute debt transactions. Secondly, the platform also provides underwriting services to banks and NBFCs for loans that originate on CredAvenue. With this acquisition, the banks and NBFCs will also be able to execute debt collection on the same platform. Spocto is the largest digital collection platform in India and also works with the top five banks in the Middle East. The founders too have a good blend of experience in collection and technology. Spocto was founded in 2016 by former General Electric executives Sumeet Srivastava and Puja Srivastava and has assets under management (AUM) worth \$50 billion across 37 clients. [Read More.](#)

### 2. AMD CLOSES \$49 BILLION ACQUISITION OF XILINX

AMD has completed its acquisitions of Xilinx in a deal valued at \$49 billion, adding momentum to its ambitions in the data centre, telecom equipment and other markets. The deal adds Xilinx's field-programmable gate arrays (FPGAs) and systems-on-a-chip (SoCs) to AMD's EPYC server CPUs and GPUs, giving it a wider range of chips to bring to new and existing customers in data centres, embedded, and telecom. For AMD, the acquisition cements its status as one of the leaders of the U.S. semiconductor landscape, giving it the scale and product breadth to keep pace as the industry consolidates and customer needs change.





The all-stock deal was worth around \$35 billion when AMD announced its plans in late 2020. But shares of the semiconductor giant have soared since then, pushing the value of the takeover to around \$49 billion, making it the largest semiconductor deal in history. AMD's deal for Xilinx moved ahead with all the necessary regulatory approvals, including in China, which approved the deal last month. [Read More.](#)

### **3. EHN VENDOR ATHENAHEALTH ACQUIRED BY HELLMAN & FRIEDMAN, BAIN CAPITAL**

Athenahealth, an (Electronic Health Record) EHR vendor boasting cloud-based tech solutions, has been acquired by two private equity firms, Hellman & Friedman LLC and Bain Capital, for \$17 billion. The EHR vendor has been acquired twice in the last few years. In 2019, Evergreen Coast Capital and investment firm Veritas took Athenahealth private in a \$5.7 billion deal. The deal required Athenahealth to merge with Virence Health, a health provider Veritas acquired from General Electric Co. Hellman & Friedman LLC and Bain Capital announced this most recent acquisition marks the end of Veritas Capital and Evergreen Coast Capital ownership of Athenahealth. However, Veritas Capital and Evergreen Coast Capital will remain affiliated with Athenahealth as co-investors.

To support the delivery of clinical and financial outcomes, Athenahealth has partnered with over 1, 40,000 ambulatory care providers throughout the nation and across 120 specialties. Through its products, Athenahealth said it aims to enhance clinical efficiency, improve financial performance, better patient care outcomes, and encourage providers to accelerate their shift toward value-based care. There is currently a demand for cloud-based EHRs, as they have become more favorable among health systems. The adoption of cloud-based EHRs can reduce health IT costs, especially for small and rural hospitals, as they will no longer need to make a large investment in in-house EHR systems.

*By Shashwat Sharma, Assistant Editor*



## NEWS UPDATES


# SECURITIES RIGHTS

### 1. SEBI DIRECTS AMCS TO FORM AUDIT COMMITTEE

The Securities Exchange Board of India (SEBI) in its circular on February 9, 2022 has directed Asset Management Companies (AMCs) to form an audit committee at the fund house level. Currently, an audit committee exists for AMCs, but only at the level of the trustees. The mandate of the committee will be to review the financial reporting processes, the system of internal controls, and the audit processes for the mutual fund operations of the AMC. Besides, it would be required to ensure that the rectifications, if any, suggested by internal and external auditors, among others, are acted upon. The committee shall have a minimum of three directors as members, and at least two-thirds of members of the committee shall be independent directors of AMC. The Chairperson of the Committee shall be an independent director, with adequate experience in the areas of finance and financial services. The circular will come into force with effect from August 1, 2022. [Read More.](#)

### 2. SEBI DILUTES STANCE: MAKES SPLITTING CMD POST VOLUNTARY

In a major rethink, SEBI has changed its earlier stance of compulsorily splitting the post of Chairman and Managing Director (CMD) to making it voluntary. In March 2018, SEBI had made it compulsory for the top 500 listed Companies to mandatorily separate the post of CMD, setting the deadline at 1st April 2020. The decision, though, received a lot of pushback from the corporate sector, forcing SEBI to postpone the deadline by two years to 1st April 2022. However, SEBI has now completely pushed back and has made it voluntary for the listed companies to separate the post, citing an unsatisfactory level of compliance reached. Currently, even after 4 years, only a few listed companies have integrated the two positions as CMD (chairman-cum-managing director) that overlap the board and the management in some cases, which could cause



ba conflict of interest. Among big corporates, Mahindra & Mahindra and Wipro Ltd have already complied with the guideline on the top posts. However, Managements of many other companies, including Reliance Industries Ltd, Hindustan Unilever, and PSUs like Oil and Natural Gas Corporation Ltd, have not split the post yet. [Read More.](#)

### **3. GOVERNMENT FILES DRAFT PAPERS WITH SEBI FOR MEGA LAUNCH OF LIC IPO**

The Government on February 13 filed the draft red herring prospectus (DRHP) of state-owned Life Insurance Corporation of India (LIC) with SEBI to launch the much-awaited Initial Public Offering (IPO) before the end of March. The issue is expected to help the government meet its revised disinvestment target of Rs 78,000 crore for the fiscal year and also tap a legion of new retail investors. Importantly, the DRHP does not indicate the size of the issue or throw light on the valuations as discussions with investors are still going on. It is a 100 percent offer for sale by the government with no fresh issue of shares of LIC. Around 31.6 crore shares are on offer representing 5 percent of the firm's equity. The Selling Shareholder (President of India acting through the Ministry of Finance, Government of India) will be entitled to the entire proceeds of the Offer after deducting the Offer expenses and relevant taxes thereon. LIC will not receive any proceeds from the Offer. [Read More.](#)

### **4. BSE GETS SEBI'S IN-PRINCIPAL APPROVAL FOR GOLD SPOT EXCHANGE**

SEBI has given its go ahead to the Bombay Stock Exchange (BSE) to launch trading in electronic gold receipts (EGRs), paving the way for the exchange to launch gold spot exchange. SEBI has also allowed vault managers to apply to act as custodians of physical gold and for conversion of EGRs into gold. SEBI has made EGRs fungible and allowed for interoperability among vault managers to reduce costs. The gold can be bought and stored in vaults until physical delivery is demanded. EGRs will take the form of shares lying in Demat accounts. The Finance Ministry has specified EGR as 'securities,' under the Securities Contracts (Regulation) Act 1956, and after SEBI's go ahead, BSE could be less than a couple of months away from launching the exchange. [Read More.](#)

*By Tarpan Soni, Assistant Editor*





## NEWS UPDATES


# TAXATION LAW

### 1. LIQUIDATED DAMAGES RECOVERED FOR DELAY IN COMPLETION OF PROJECT ATTRACTS 18% GST: TELANGANA AAR

The Telangana Authority for Advance Ruling (AAR) has ruled that liquidated damages recovered for the delay in commissioning under an agreement constitute "supply" under the Goods and Service Tax (GST) law, attracting a levy of 18% GST (9% each, Central and State GST). In the present case, the Applicant engaged in the production of electricity from solar energy had entered into an agreement for the construction of a solar power project. The agreement provided for liquidated damages for delay in commissioning and delivery of contract. The Applicant, in its application to the AAR, raised the query as to whether the liquidated damages recoverable by him due to delay in commissioning of the project are to tax under the GST laws. The AAR ruled that the liquidated damages claimed by the Applicant for the delay in commissioning beyond the time fixed under the agreement, constituted consideration for tolerating an act or a situation arising out of contractual obligations, and hence they were taxable since they fell under Entry 5 (e) of Schedule II of the CGST Act, 2017. [Read More.](#)

### 2. GIFTING FREEBIES TO DOCTORS PROHIBITED BY LAW; PHARMA COMPANIES CANNOT CLAIM IT AS DEDUCTION U/SEC 37(1) INCOME TAX ACT: SUPREME COURT

The Supreme Court has held that 'pharmaceutical companies' gifting freebies to doctors is prohibited by law and they cannot claim it as a deduction under Section 37(1) of the Income Tax Act, 1961. Section 37 provides that any expenditure, laid out or expended wholly and exclusively for the purposes of the business or profession shall be allowed in computing the income chargeable under the head "Profits and gains of business or profession". However, Explanation 1 clarifies that any expenditure incurred by an assessee for any purpose which is an offence or which is prohibited by law shall not be deemed to have been incurred for the purpose of business or profession



cand no deduction or allowance shall be made in respect of such expenditure. The Indian Medical Council rules have made accepting freebies given by pharmaceutical companies to medical practitioners punishable. The SC said that freebies are technically not 'free' – the cost of supplying such freebies is usually factored into the drug, driving prices up, thus creating a perpetual publicly injurious cycle. [Read More.](#)

### **3. LONG TERM CAPITAL GAINS SURCHARGE CAPPED AT 15% FOR ALL ASSETS: BUDGET 2022**

The rate of surcharge on long term capital gains (LTCG) from any long-term capital asset has now been capped at 15%. Till now, the surcharge on LTCG on listed shares and equity oriented units included in income was capped at maximum of 15% even if otherwise one was liable to pay surcharge at a higher rate on other income. However, the same was not applicable for other LTCGs like that arising from sale of unlisted securities, property, etc. The surcharge in these cases went up to 37% in case of LTCG over Rs 2 crore. This cap of 15% was applied only for one category of long term capital gains but for the rest of long term capital gains, one had to pay surcharge at applicable rates. The Budget has proposed the cap of 15% surcharge on LTCG of all nature. [Read More.](#)

### **4. INCOME FROM TRANSFER OF VIRTUAL DIGITAL ASSETS TO BE TAXED AT 30%: BUDGET 2022**

Budget 2022 has proposed to introduce new provisions for taxation of income from the transfer of virtual digital assets (VDAs). VDAs would include any information or code or number or token (not being Indian currency or any foreign currency), generated through cryptographic means or otherwise. Non Fungible Tokens (NFTs) are also included within the definition. Any income from transfer of VDAs would be taxed at the rate of 30%. No deductions for any expenditure are permitted except the cost of acquisition. Further, loss from such transactions cannot be set off against any other income. Gift of digital assets would be taxable in the hands of recipients. In order to track transactions of digital assets, TDS at 1% on sale considerations would be applicable on payments subject to a certain threshold. [Read More.](#)

*By Tarpan Soni, Assistant Editor*



## NEWS UPDATES

## TMT LAW

### 1. NO US CHALLENGE TO WARNERMEDIA DEAL: DISCOVERY

U.S. antitrust regulators have not challenged the \$43 billion combination of Discovery and AT&T's WarnerMedia during a key review period, according to corporate securities filings, easing the way for the deal to close in the next few months. In a big retreat for wireless giant AT&T, the company last year decided to separate WarnerMedia, which it bought in 2018 for \$81 billion after a protracted antitrust battle with the Trump-era Justice Department. WarnerMedia, home to CNN, HBO and HBO Max, would then combine with Discovery, the parent of networks like HGTV and its own streaming service, Discovery+. Discovery Inc. said in a filing that it and AT&T Inc. have not gotten objections from the Department of Justice or the Federal Trade Commission during a key review period that has ended. U.S. antitrust authorities could still decide to file suit, but that is uncommon. European antitrust regulators have already signed off, and the deal is expected to close in the second quarter. Discovery shareholders still have to approve it. [Read More.](#)

### 2. INTERNET DISRUPTED AS RUSSIAN TROOPS ADVANCE IN UKRAINE

For many of the residents of Ukraine's second-largest city, Kharkiv, who woke in the early hours of Thursday morning to Russia's invasion, their first instinct would have been to call or send messages to family members. But a significant portion couldn't. They didn't have internet access. That's according to NetBlocks, a digital advocacy group that tracks internet outages across the globe. "Network data from NetBlocks confirm a significant disruption to internet service in Kharkiv, Ukraine's second-largest city," the group wrote on its website.

According to an accompanying graph, up to 25% of internet users were impacted in Kharkiv and the surrounding region, which has a population of around 1.8 million people. Internet outages now accompany almost every conflict that happens around the world, but typically these blackouts come during civil unrest, especially in places where an authoritarian leader has the power to unilaterally switch off access to the internet for a whole country. [Read More](#)

### 3. ECLAT MEDIA GROUP PARTNERS WITH TATA COMMUNICATIONS TO BRING GLOBAL SPORTS TO PAN-ASIAN VIEWERS

Tata Communications and Eclat Media Group today announced the expansion of Eclat's sports content broadcasting to viewers across Asian countries, including Indonesia, the Philippines, Malaysia, Singapore, and Thailand. This new agreement powers Eclat Media Group's newly launched channels, SPOTV and SPOTV2 to broadcast 4000+ hours of content annually.

Tata Communications is a global digital ecosystem enabler while Eclat Media Group is a premier broadcaster of global sports content. Tata Communications Media Ecosystem, coupled with Video Connect and Satellite Uplink services, will allow commentators of SPOTV and SPOTV2 to overlay commentary in their local language, which is added to the viewers' video feeds for relevant regions. Fans across Asia will now be able to watch their favourite global sports in their preferred language commentary, thereby expanding the reach of content to millions of new potential viewers. Tata Communications Media & Entertainment Services offer a comprehensive suite of solutions for global media value chain workflow including contribution, processing and distribution. With an infrastructure spanning the world that allows end-to-end content delivery at scale, the company enables over 9,000 live events, 700 TV channels and 60,000 hours of live content, reaching over 2 billion sports fan globally. [Read More](#)

*By Shashwat Sharma, Assistant Editor*



# CALL FOR COMMENTS



## **1. SEBI PROPOSES TO ALLOW FPIS TO PARTICIPATE IN COMMODITY DERIVATIVES MARKET, SEEKS PUBLIC COMMENTS**

The Securities Exchange Board of India (SEBI) has proposed allowing foreign portfolio investors (FPIs) to participate in the exchange-traded commodity derivatives market (ETCD). SEBI has issued a consultation paper in this regard, seeking public comments. The regulator has suggested that FPIs should be allowed to trade in all non-agricultural commodity derivatives and a few selected broad agricultural commodity derivatives, to begin with. Currently, foreign entities having actual exposure to Indian commodity markets, known as eligible foreign entities (EFEs), are allowed to participate in the Indian commodity derivatives market. FPIs being financial investors with huge purchasing power have not yet been allowed to participate in the ETCD market. Over the past few years, the regulator has allowed institutional players like Alternative Investment Funds (AIFs), mutual funds, and portfolio managers to participate in commodities markets. SEBI has proposed that EFE norms should be discontinued and foreign investors may participate in Indian ETCDs through the FPI route. Further, the condition of mandatory actual exposure to Indian physical participation as in the case of EFEs should be dispensed with to enhance participation. Comments have been sought till 24th March on the proposal and can be mailed to [cdmrd\\_fpi@sebi.gov.in](mailto:cdmrd_fpi@sebi.gov.in) . [Read More](#)

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