RFM Law Review

RGNUL FINANCIAL AND MERCANTILE LAW REVIEW

# AU COURANT

## SEPTEMBER 2020

CONTENTS

# NEWS UPDATES

## Alternative Dispute Resolution Law

- The Ministry of Law of Singapore has introduced the International Arbitration (Amendment) Bill, 2020 ("Bill"). The Bill proposes two major amendments to the International Arbitration Act. The first amendment adds default processes and timeframes for appointing arbitrators in a multi-party arbitration. Another proposed amendment aims to empower the tribunals to enforce any existing obligation of confidentiality present under the rules of arbitration.
  Read more
- Recently, in the case of **Government of India v. Vedanta Ltd. & Ors.,** the Apex court decided that aforeign award can never be termed as a decree of a civil court and the Limitation Act will not be applicable. The applications for enforcement of foreign awards will be "deemed decrees" and the residuary limitation period of three years will apply for filing a petition to enforce them.
  Read more
- **Petition Under 227 is not maintainable unless lack of jurisdiction arises: The** Supreme Court in the case of ***Punjab State Power Corp. Ltd. v. Emta Coal Ltd. and Anr.*** has held that a petition filed under Article 227 of the Constitution for dismissal of the petition under section 16 of Arbitration & Conciliation Act, 1996 can only be entertained in the circumstance where the there is an apparent lack of jurisdiction in the order given by the arbitrator.
  Read more
- **Maintainability of two Arbitration Clauses:** The Apex Court in the case of ***Balasore Alloys Ltd. Medima LLC*** stated that in cases where two arbitration clauses have been placed containing different specifics of the procedure governing different parts of the contract, then.the relevant clause will solely depend upon the dispute so raised.
  Read more

## Aviation and Defence Law

- The Aircraft (Amendment) Bill, 2020, passed on September 15, 2020, seeks to amend the Aircraft Act, 1934, and to convert the three existing regulatory bodies under the Civil Aviation Ministry into "statutory bodies". Furthermore, it aims to increase the level of security and safety in the aircraft operations of the nation.
- A bench comprising of Justices Ashok Bhushan, R Subhash Reddy and M R Shah asked the center to pay and clarify the modalities of paying the refund to people who booked tickets and encountered losses due to the nation-wide lockdown. The DGCA, in its affidavit, said that full refund shall be provided by airlines immediately for

tickets booked during the lockdown period. The Court is yet to rule further in this matter.

- As a part of the "Aatmanirbhar Bharat" initiative, announced on May 16, and with the aim to make India the "largest exporter" of weapons, the government has permitted 74% foreign direct investment (FDI) under automatic route in the defense sector with certain conditions. Additionally, the government has constituted the 'Empowered Group of Ministers' (EGoM) to oversee the process of the corporatization of the Ordnance Factory Board (OFB).

## Competition Law

- **Resolving the long-lasting ambiguity that persists with respect to locus standi:** The Competition Commission of India (CCI) in its recent order in the Harshita Chawla case, decisively dispelled the ambiguity that persists regarding who can approach the commission. The commission earnestly asserted that violation of the act is "In Rem" and not "In Persona". Therefore, the informant need not necessarily be the aggrieved party to file the complaint.
  Read more
- **CCI dismissed the abuse of dominance case filed against Amazon:** The CCI has dismissed the allegation of abuse of dominance against Amazon Sellers Service filed by Dutch brand Beverly Hills Polo Club (BHPC). On the claim of dominance, CCI observed that Amazon is facing horizontal competition from Flipkart and vertical competition from Myntra, Ajio, etc. so there is no question of dominance that persists if the company is not dominant in the relevant market.
- **The US giant Google has moved to CCI for acquiring a stake in Jio:** The US internet giant Google has moved to the CCI to get clearance for its investment of Rs. 33,737 Cr. in Jio platform for acquiring non-controlling shareholding of 7.73% of equity share capital. The investment shall be made by wholly-owned subsidiary Google International LLC (GIL) into the digital arm of Reliance Industries under Section 5(a) of the Competition Act, 2002.

## International Trade Law

- **Department of Revenue extends anti-dumping duty on float glass from China:** As per a notification, the Department of Revenue has extended anti-dumping duty on imports of float glass from China for three months, till December 7, upon the recommendation of the commerce ministry's investigation arm, Directorate General of Trade Remedies (DGTR). The duty of USD 218 per tonne was imposed for the first time on September 8, 2015, for a period of five years.
  Read more
- **Decline in the global merchandise trade:** According to data released by the World Trade Organization (WTO) on September

23, 2020, the global merchandise trade volumes declined by 14.3% in the second quarter of 2020 compared to the previous period as COVID-19 containment measures affected economies around the world. The latest trade contraction is sharper than the 10.2% drop recorded during the financial crisis between the third quarter of 2008 and first quarter of 2009.

Read more

## Intellectual Property Law

- Recently, the Delhi High Court passed an interim injunction in the case of ***McDonald's Corporation & Anr v. National Internet Exchange of India & Ors.***, which restrained numerous corporate entities from infringing McDonald's' registered intellectual property including the names of its burgers like Maharaja Mac and its well-known trademark i.e. the famous Golden Arches logo.

  Read more

- **T-Series serves legal notice to video sharing app's:** Recently, music label T-Series approached the Delhi HC seeking a permanent injunction against short-video sharing platforms for allegedly exploiting their copyrighted work without obtaining license. It further contended that its copyrighted sounds were being illegally compiled and advertised within video ads. The Court held in the matter sub-judice that injunction cannot be granted without hearing the parties on the application.

  Read more

- **Global Innovation Index 2020:** The 2020 edition of the Global Innovation Index (GII) was released by WIPO with Switzerland emerging at the top. India secured 48th position and became the third most-innovative lower-middle-income economy in the world. The index is a leading reference for measuring an economy's innovation performance, and has lately gained an eastward shift towards India, China and the Philippines in the innovation arena.

- **Facebook releases a new feature for protection of Intellectual Property:** Facebook has announced the expansion of its Rights Manager feature for images in order to help creators and publishers manage their intellectual property and to keep track of their content. The tool will now automatically detect image copyright violations for claimed content across both Facebook and Instagram. The feature is also claimed to have a fast and effectual IP reporting system and a repeat infringer policy.

- **Amendments in geographical indications rules:** Central Government has notified the Geographical Indications of Goods (Registration and Protection) (Amendment) Rules, 2020. The amendments primarily address the provisions under Rule 56 regarding the registration of the Authorized

users of registered GI goods. An authorized user can now directly apply for registration, without the need of a joint application and letter of consent from the registered proprietor.

## Insolvency Law

- **RS passed the Insolvency and Bankruptcy Code (Second Amendment) Bill, 2020:** The Rajya Sabha on September 19, 2020, passed the Insolvency and Bankruptcy Code (Second Amendment) Bill, 2020. This Bill replaces the ordinance that was passed in the month of June and subsequently ensures that no fresh proceedings are initiated for at least 6 months, starting from March 25. This amendment will not affect the status of applications that were filed before the stipulated date.
  Read more
- **Insolvency proceedings against corporate debtors as well as personal guarantors can go concurrently:** Finance Minister, Nirmala Sitharaman, while replying to a debate on the Insolvency and Bankruptcy Code (Second Amendment) Bill, 2020 in the Rajya Sabha, said that law provides for carrying out insolvency and bankruptcy proceedings against corporate debtors as well as personal guarantors together.
  Read more
- **Extension of suspension of fresh insolvency proceedings for 3 months, with effect from 25 June 2020:** The ordinance promulgated in June, which provided for the suspension of Sections 7, 9, and 10 of the Insolvency and Bankruptcy Code ended on 25 September 2020. The government has extended the suspension of fresh insolvency proceedings for another 3 months, with effect from 25th June 2020. The Ministry of Corporate Affairs had notified the extension, after receiving an extensive representation of industries seeking an extension.
- **RBI may propose amendments to the SARFAESI Act to allow ARC:** The RBI has asked its legal teams to propose recommendations for the amendment in the SARFAESI Act to allow Asset Reconstruction Companies (ARCs) to bid for bankrupt companies and infuse equity in them at the resolution stage. These recommendations will be taken into consideration during the monsoon session of the parliament.
- **Department Telecom to oppose the sale of Aircel, RCom Spectrum, unless all dues are settled:** Department of Telecom is all set to oppose the sale of Aircel, Reliance Communications spectrum until their statutory dues have been cleared. It also stated that if the telcos areare unable to pay the same, then their buyer under the insolvency proceedings, i.e. UV Asset

Restructuring Company (UVARCL), shall be held liable for Adjusted Gross Revenue (AGR) dues.

Read more

## Securities Law

- **SEBI bans Kalyani and Kalyani Developers India Ltd. from the securities market:** The Securities and Exchange Board of India (SEBI) has banned Kalyani and Kalyani Developers India Ltd. (KKDIL) from the securities market till the passing of any further order after it found that KKDIL and its directors have prima facie not complied with the Companies Act, 2013 and the Issue of Capital and Disclosure Requirement (ICDR) Regulations by making the public issue of equity shares and Cumulative Compulsorily Redeemable Non-Convertible Preference Shares (CRPS) of Kalyani Developers without following the requisite issue and listing norms. In the course of the examination, the watchdog mentioned that the corporation had issued fairness shares cumulatively amounting to Rs 3.49 crore.

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- **SEBI released new margin rules:** SEBI's new margin rules came into effect on September 1. It is now prescribed that the stock will remain in an investor's Demat account and can be directly pledged to the clearing firm, brokers have to mandatorily collect margins from investors upfront. The margin rules also mandate that a Power of Attorney cannot be assigned to brokers and that investors have to create margin pledge separately to avail the margin.

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- **Modification in Net Asset Value norms:** SEBI has modified norms for assigning Net Asset Value (NAV) while purchasing units of mutual fund (MF) schemes with effect from January 2021. The NMF orders will get NAV of the day when funds reach asset managers and not of the day of application, i.e., closing NAV of the day shall be applicable on which the funds are available for utilization.

  Read more

- **SEBI Guidelines for Proxy Advisors:** SEBI's rigidified procedural requirements for proxy consulting firms will be implemented from January 1, instead of September. The new guidelines require proxy advisors to devise voting recommendation policies and disclose the same to clients, review their policies at least once annually, and alert clients within 24 hours of receipt of information, about any errors/revisions to their report, among other obligations.

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- **Stock Exchange to levy penalties in case of non-redressal of investor companies:** SEBI's framework for handling investor complaints by exchanges as well as a standard operating procedure for actions taken against listed companies for failure to redress such

grievances came into effect from September 1. Under the new framework, exchanges can levy penalties on companies in case of non-redressal of investor complaints and ask depositories to freeze the shareholding of the promoter entities.

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## Technology, Media and Telecommunications Law

- In a recent case, the Belgian Data Protection Authority (DPA) imposed a fine of EUR 600,000 on Google Belgium SA/NV (Google Belgium) for not respecting a Belgian resident's right to be forgotten. This is the highest fine ever imposed by the Belgian DPA.

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- **Data Security: RBI seeks exemption:** The RBI has sought exemption from the proposed Personal Data Protection Bill, 2019 for its regulatory and supervisory functions and has appealed for the dispensation of financial data of individuals from being classified as 'sensitive personal data'. It reasoned that the exemption would support financial inclusion and aligns with the International norms as followed by the central banks of the UK and Malaysia.

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- **Data Empowerment and Protection Architecture (DEPA) - a paradigm shift in Data Protection Regime:** Recently, the NITI Aayog has released draft Data Empowerment and Protection Architecture (DEPA) which promotes greater user control on data sharing with third-party institutions and allows people to access data in a seamless manner. It uses a set of open digital specifications for individual consent and Application Programming Interfaces (APIs) to access information across sectors ranging from finance to healthcare.

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- **Data Protection law comes into effect in Brazil:** Brazil has now formally enacted its first General Data Protection Law ("LGPD"). Largely modeled after EU's GDPR the law provides for extraterritorial jurisdiction. It deals with the concept of personal data, lists the legal bases that authorize its use, and grants various rights to data subjects such as rights to access, portability, anonymization and deletion of personal data.

- **The EU's top court addresses net-neutrality rules:** The Court of Justice of the EU (CJEU) delivered its landmark judgment in a matter concerning the application of "zero-rating" practices by Telenor, an internet service provider. The court ruled that such practices which involve discriminatory blocking or slowing down of traffic once the data cap is reached are not in compliance with the principle of net neutrality established in Article 3(3) of Regulation 2015/2120.

  Read more

- **Universal Self-Regulation Code for OTTs:** Fifteen Leading Over The Top (OTT) services have adopted a self-regulation based model termed as the "Universal Self-Regulation Code for OCCPs" to address user grievances. The code was released by the IAMAI, and it will set up a Consumer Complaints Department, provide content descriptions and parental controls, thus, enabling consumers to make an informed choice and not stifling the creative freedom of content creators.
- The SC bench headed by Justices Arun Mishra, S Abdul Nazeer, and MR Shah in the case of ***Union of India v. Association of Unified Telecom Service Providers of India***, allowed telecom companies a window of 10 years to pay the adjusted gross revenue (AGR) dues along with interest and penalty (estimated to be around Rs 1.6 lakh crore). Further, the top court asked NCLAT to decide as to whether the spectrum of insolvent telecom companies can be sold under the insolvency proceedings.

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# EDITORIAL COLUMN

## CALIFORNIA COURT PUTS BREAK ON THE HIGH-SPEED RUN CHASE


*This article is authored by Pranav Tomar and Ridhima Bhardwaj, Associate Editors at RGNUL Financial and Mercantile Law Review (RFMLR).*

Introduction:

The Apex court of California in its recent judgment has directed the two ride-sharing companies Uber and Lyft to re-classify their drivers as 'employees' instead of 'independent contractors'. The court has given ten days to both the companies to either appeal the order or amend their business models as per the directions of the court.

Both the companies objected to the petitioner's claim by stating that the drivers working for the company are more like independent freelancers rather than employees. According to the company, the drivers are at will to turn off their Uber services during their course of employment. While deciding the case, the court referred the ABC test established by the Supreme Court in the case of *Dynamex Operations West, Inc. v. Superior Court* in order to determine the classification the employees under employment.

Insight into Assembly Bill:

The California Supreme Court relied on its 2018 ruling in *Dynamex Operations v. Superior Court* which laid down the ABC Test later codified as the Assembly Bill 5 ("Bill"/ "AB5"), commonly referred to as the "*gig workers bill.*"

The primary objective of AB5 is to guarantee to the workers standard labor and employment rights as well as the incentives that are normally/ usually refused to independent contractors, namely minimum wage and overtime pay, paid leaves, workers' compensation coverage, and unemployment insurance reimbursements.

The court established this test for the companies to use a three-fold approach in order to recognize workers as "employees" or "independent contractors," under which, a worker shall be classified as an independent contractor if the following conditions are met:

*A) The worker is independent of control and direction from the hiring entity regarding the performance of work, both under the contract for the performance of the work and in fact;*

*B) the worker performs work that is outside the usual course of the hiring entity's business;*

*C) the worker is customarily engaged in an independently established trade, occupation, or business of the same nature as the work performed.*

This test, nevertheless, transfers the burden of proof on the employers, to establish that the workers are not "employees" by repudiating any of the aforementioned conditions. With the objective of being exempt from any liability and further, categorizing their drivers as independent contractors under the second clause, Uber and Lyft, claimed that they are neither transportation companies nor "hiring entities," but are rather service providers for ease of transactions between drivers and customers which implies that the drivers perform work outside the usual course of their business. This argument, however, was rejected by the California Supreme Court.

Thus, reliance was placed on this test for bringing the gig-workers, i.e., the drivers working for Uber and Lyft, at par with their status as an employee of the company and not an independent contractor and to guarantee the rights and perks associated with the former.

Dimensions of Competition Law:

The California Supreme Court held that misclassification of workers as "independent contractors" would hamper the basic rights and protections to which the workers are entitled. Under Californian labour and employment laws, the rights such as minimum wages, wages compensation, unemployment insurance, and paid sick & family leave are protected by the government. The court stated that the companies are leaving drivers vulnerable without these rights.

Misclassifying the workers would give an unfair trade advantage to these companies over other competitors. Competition between ride sharing companies has always been a center of the debate. Due to the 'independent worker' clause in place, the companies will be absolved from the liabilities of the acts performed by its drivers.

The companies may widen their edge over the competitors with the reserves they generate through misclassification of workers. Moreover, serious concerns were also raised for creating a ripple effect amongst the ride-sharing companies who have been abiding by the law till now, but might change their business models as per Uber and Lyft.

With such a widespread scope, deep discounting can be implemented by the ride-sharing giant and this would result in attracting provisions of anti-competitive agreements throughout the world.

Even if the scope is limited to California, Uber & Lyft account for about 68% and 29% of market share respectively in United States and is a dominant entity in the country and is abusing its dominant position for implementing arbitrary and partial policies.

Indian Perspective:

Comprehending India's position on the status of the drivers in this dispute has left us with ambiguities in the existing Indian laws and their decreasing relevance, as well as the future implications of a decision in either party's favour.

The definitions given by the Motor Transport Workers Act, 1961 or the tests laid down by the Supreme Court were considered to be beneficial in making a well-informed distinction between an employee and an independent contractor, however, with changing times, varying circumstances and different work environment for such drivers, there exists an overlap of elements among the two categories signifying a desperate need for reform in the legal framework or a new model to protect their interests to the fullest.

A decision categorising these drivers as employees could have serious implications for these companies in India. This would imply that these service platforms are no longer an intermediary between the drivers and customers, rather, a business which provides transport services electronically. For this, no FDI is allowed in India which would significantly affect their global market. However, if the drivers remain independent contractors, there may not be any reform in their conditions and work environment.

Conclusion and Future Prospects:

This decision has come at a time when there exists a despairing need for transformation for independent workers, particularly with the evident evolution of the gig economy. The AB5 plays a significant role in ascertaining that companies cease to exploit their employees by categorizing them as independent contractors.

The incentives also bring some obstacles, like flexibility of working hours for independent contractors, radically decreasing the earning potential thus, reducing their ability to capitalize on their retirement savings. At the same time, employers are dissatisfied due to increased costs associated with hiring an employee as compared to an independent contractor.

The overarching effect of this judgment is highly unforeseen yet. However, the key concern remains whether the benefits of being categorized as an employee will overshadow the detriments or not. Conclusively, it will be intriguing to witness if there arises a third way for gig workers to enjoy both the perks and the flexibility.

**Access the full judgement here**

# CAROTAR RULES: ADDING TO THE PLIGHT OF IMPORTERS

*This article is authored by Talin Bhardwaj and Pulkit Gera, Associate Editors at RGNUL Financial and Mercantile Law Review (RFMLR).*

## Introduction

Free Trade Agreements (FTAs) are agreements which aim to liberalize trade between two or more countries by reducing tariffs and quotas on the goods traded between those countries. FTAs also provide certain protection to the traders and are thereby, essential for removing the barriers to international trade. In this context, the "Rules of Origin" play an important role to determine a product's country of origin. On the basis of these rules, various nations decide upon the tariffs and concessions to be given on those products that are covered under the FTA signed by the nations. Recently, the department of revenue under the ministry of finance notified the Customs (Administration of Rules of Origin under Trade agreements) Rules, 2020 ("CAROTAR Rules") which would be applicable from September 21, 2020. The major objective of these rules is to curtail the abuse of the relaxations provided to other countries by the virtue of signing an FTA with India and thereby, reduce the possibility of dumping of certain products.

## Analysing the CAROTAR Rules

Under the previous rules, for claiming preferential rates of duty, the importer was required to submit Certificate of Origin (CoO) issued by a competent body and the documentation of the goods like bill of entry and invoice. However, the CAROTAR Rules, requires the importer to possess detailed information of the goods in addition to the CoO, bills of entry and invoice, to satisfactorily prove the country of origin alleged by him. Form-I annexed in the rules, provides a comprehensive list of documents including but not limited to product manufacturing process, originating criteria as per Rules of Origin, regional value content etc., which the importer in all probability is required to possess before the import of the goods and produce the same to the proper officer within ten working days from the date of such information or documents being sought. Further, CAROTAR Rules, 2020 read with Section 28DA of the Customs Acts, 1962

requires the importer to exercise reasonable care to the credibility and truthfulness of any information supplied to the authorities for claiming of preferential rates of duty. In case the importer fails to provide requisite information or provide any information which appears to be forged or erroneous, the proper officer can send a verification proposal to the Verification authority i.e. exporting country or country of origin, for verifying the relevant documents submitted by importer, under Point 6 of the CAROTAR Rules. Thus, under these new rules, the procedure for claiming preferential rate of duty has become more stringent and onerous for importer.

Benefits

In order to claim the preferential rate of tariffs under the FTAs, the foreign traders would now need to fulfil a very extensive and elaborate criteria provided under the CAROTAR Rules. This is beneficial for India in two major ways. Firstly, the high threshold to prove the country of origin and the strict scrutiny created by the CAROTAR Rules would reduce the chances of dumping of certain products. In recent times, the Indian markets have been experiencing the problem of severe dumping in products such as inter alia steel, optical fibers, phosphoric acid, rubber and some electronic products. The CAROTAR Rules provide an effective solution to tackle this situation as the increased stringency would, in effect, increase the level of transparency. The foreign traders would be strictly scrutinized, whereby all the products that are imported, need to be registered into the bill of entry along with all the relevant documents indicating the prices and the quantities of the various products being brought into India. Thus, essentially, the traders have a heavy burden to prove the country of origin and supply all the requisite details to the customs authority. Secondly, the abuse of the liberalized trade provisions provided under the FTAs have caused detriment to the domestic traders in terms of the excessively reduced prices of the imports. The CAROTAR Rules would act as a deterrent for the traders to engage in such malpractices and would therefore, help in protecting the interests of the domestic traders.

Limitations

Even though, the firm documentation of the CAROTAR Rules, 2020 will help in mitigating the exploitation of the Free Trade Documents (FTAs) by the importers, nevertheless, it might lead to increase in the exploitation of powers by the officers concerned and corruption practices. Point 5 of the CAROTAR Rules gives extensive powers to the Principal Commissioner of Customs and the Commissioner of Customs to disallow the claim of preferential rate of duty without any verification. This arbitrary power with the officers can lead to unreasonable denial of the importers' claims and increase in cases of bribery for getting the claims accepted. Moreover, the above rule

contradicts to the Rules of Origin such as Customs Tariff (Determination of Origin of Goods under the Comprehensive Economic Cooperation Agreement between Republic of India and Republic of Singapore), where the verification process is mandatory and does not work on the discretion of the officer concerned. Further, point 6(7) of the CAROTAR Rules, 2020, provides the officer an option to deny the claim of preferential rate to the importer in case the Verification Authority fails to respond to the verification request or to provide the requested information in the manner as specified under the CAROTAR Rules read with Rules of Origin. The above provision goes against the principle of natural justice as it imposes undue liability on the importer for the mistake committed on the part of verification authority.

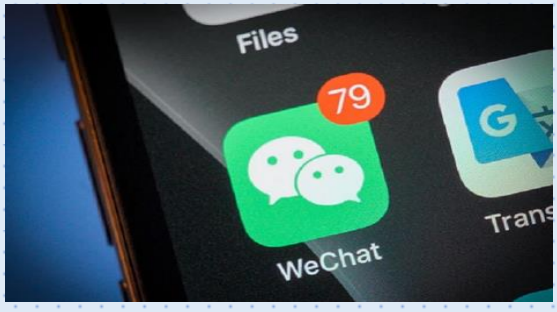
Conclusion:

The intent behind the introduction of the CAROTAR Rules was to prevent the traders from claiming concessions and benefits by abusing the provisions of the FTA and subsequently protect the interests of the domestic traders. Notwithstanding the benefits and the limitations of the CAROTAR Rules, it is certain that the traders would now undergo an extensive scrutiny while importing various goods. The rules came into effect a week prior i.e. September 21, 2020 and thus, its effectiveness cannot be gauged to the fullest at this point of time.

**Access the notification here**

# RECENT ON THE RFMLR BLOG

- **CHINESE APPS BAN-LEGALITY IN DOMESTIC AND INTERNATIONAL LAW**




*This blogpost is authored by Kumar Shubham, a second-year student of BBA LL.B. (Hons.) at the National Law University, Odisha.*

The blogpost discusses the increasing tensions between India and China and its effect on the business ventures with specific focus on the banning of Chinese apps by the Indian Government. The author sheds light on the Indian Government's decision of banning around 170 apps with the purpose of ensuring protection of sovereignty and security of the nation.

- **CCI'S COMPLIANCE WITH PRINCIPLES OF NATURAL JUSTICE: A NEED FOR UNIFORM APPROACH**

*This blogpost is authored by Mahima Chhabrani, a third-year student of B.A. LL. B (Hons.) at the West Bengal National University of Juridical Sciences, Kolkata.*

The blogpost discusses the principle of Natural Justice (*audi alteram partem)* in relation to the procedure of investigation under Competition Act, 2002. Article 26(1) of the Act confers powers on the CCI to order for an investigation when it finds a prima-facie case. The author analyses the inconsistencies in the practice of the CCI in conducting investigation and provides pragmatic amendments in the Act to bring uniformity in the investigation process.

**Access the RFMLR Blog here**

# RFMLR TECHTALK


**RFMLR TECHTALK**, the webinar series organized by the Editorial Board, was aimed to create awareness and promote discourse on Fintech law. In recent times, we constantly encounter aspects of fintech law and this has been reinforced during the COVID-19 pandemic.

**Session 1:** For the first session held on 11th September 2020, we were joined by Ms. Akshata Namjoshi, Lead (Fintech, Blockchain, and Emerging Tech) at KARM Legal Consultants, UAE.

The session began with an explanation on the genesis of open banking and open finance as a culmination of numerous old concepts into one with a customer centric approach where the financial details of the customer are shared between players in the ecosystem. She highlighted the role played by regulators and other major players in this sphere, role of account information service providers, payment initiation service providers, and Digital IDs in Open Banking and Open Finance.

**Session 2:** For the second session, held on 12th September 2020, we were joined by Mr. Ratul Roshan, who is an Associate at Ikigai Law with expertise in Blockchain Technology, Fintech, and Tech Policy. The session dealt with Smart Contracts and their Enforceability along with an interactive Q&A Session and insightful contributions from the participants. Mr. Ratul Roshan began with describing the process of blockchain and the hashing of blocks.

The discussion ranged from Chameleon Hashes to the technology and utility behind Ricardian Contracts in the Blockchain.

# RECOMMENDED READS

1. **THE MULTILATERAL INVESTMENT COURT: ONE STEP FORWARD, TWO STEPS BACK**

   By Rishabh Malaviya and Tanya Singh (Associates at Cyril Amarchand Mangaldas, Mumbai)

   *RFMLR VOL. 7 ISSUE 1 (2020)*

   *"The bilateral investment court system proposed by the European Union and included in some of its treaties is a hybrid of investor state arbitration and judicial settlement of investment disputes……..At first blush, one can see why such a system could be attractive to the critics of traditional investor-state arbitration. The court would consist of publicly appointed judges, thereby giving 'states' a greater say in choosing who decides their disputes (as opposed to allowing investors to also have a say)."*

2. **THE INPUT TAX CREDIT PARADOX: AN ANALYSIS OF RULE 36(4) OF THE CENTRAL GOODS AND SERVICES TAX (CGST) RULES, 2017 WITH SPECIFIC EMPHASIS ON ITS LEGAL VALIDITY**

   By Abir Satsangee (Chartered Accountant) and Shabd Roop Satsangee (Articled Assistant at Sahib P. Satsangee & Co., Chartered Accountants)

   *RFMLR SPECIAL ISSUE ON GOODS AND SERVICES TAX (2020)*

   *"One of the major legislative intents behind the introduction of GST was to reduce the multiplicity of indirect taxes and ensure a seamless flow of credit is available to the recipients to remove cascading of taxes and reduce cost of production and inflation. Rule 36(4) goes against the very spirit of ensuring seamless availability of ITC to the recipient."*

3. **COVID-19: IMPLICATIONS UNDER THE INDIAN COMPETITION LAWS**

   By Kunal Mehra (Partner at Dua Associates, Advocates & Solicitors, New Delhi)

   *RFMLR SPECIAL E-EDITION ON COVID-19 (2020)*

   *"The million-dollar question is whether even in these challenging times, are the businesses expected to adhere to the competition law requirements and compliances? The answer is overwhelmingly in the affirmative."*

4. **CYBERSECURITY AND TRADE AGREEMENTS: THE STATE OF THE ART**

   By Chimène I. Keitner (Professor of International Law, UC Hastings Law School and Partner) and Harry L. Clark (Chair of International Trade & Compliance Group, Orrick, Herrington & Sutcliffe LLP)

   *HARVARD BUSINESS LAW REVIEW ONLINE VOLUME 10 (2019-2020)*

*"Although some have argued that the existing World Trade Organization (WTO) framework governing Technical Barriers to Trade (TBT) could be used to assess national cybersecurity measures ostensibly adopted for legitimate purposes, the current trend suggests that more specific negotiated language will ultimately supply the rules for digital trade and related flows of technology and data."*

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