AU COURANT

RGNUL FINANCIAL AND MERCANTILE LAW REVIEW

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PREFACE

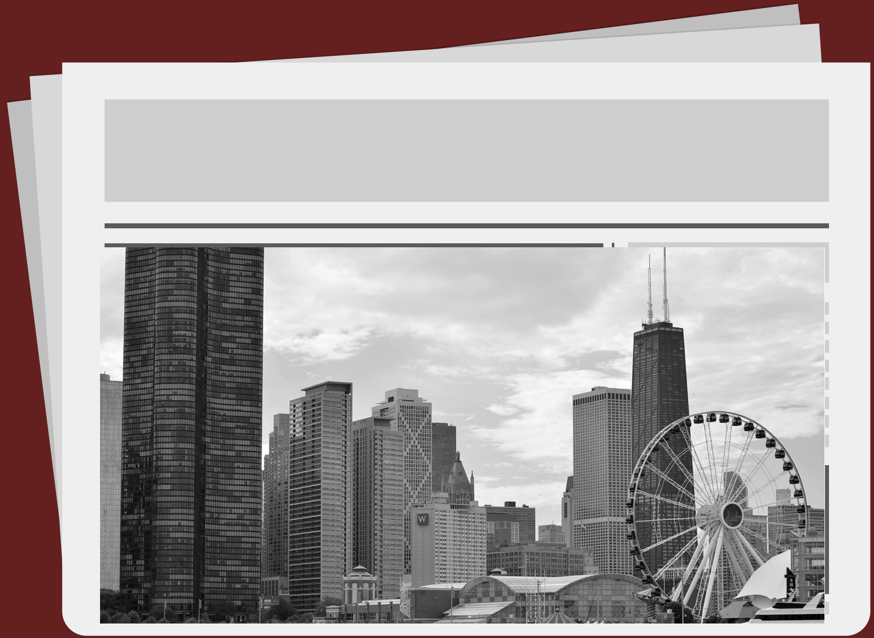
It gives us immense joy to share with our readers, the March edition of our monthly newsletter, "Au Courant".

In this edition, the current on-goings in various fields of law have been analyzed succinctly in the 'Highlights' section to provide readers with some food for thought. This includes brief comments on the judgement of Karnataka HC quashing the amendment to Rule 89(4)(C) and declaring the rule as ultra-vires and violative of Articles 14 and 19 of the Constitution of India, and the Supreme Court of India ordering SEBI to repay Rs 300 crore in disgorgement orders deposited by the National Stock Exchange of India Ltd, brief comments on the SEBI standardizing provisions for Valuation of Alternative Investment Funds, and a short synopsis on the approval of the merger of HDFC and HDFC bank by NCLT and the approval of resolution plan proposed by Adani Ports SEZ Ltd. for Karaikal Ports Pvt Ltd. by NCLT.

Major happenings in various fields of law such as alternate dispute resolution, banking and finance, competition law, insolvency and bankruptcy, intellectual property rights law, mergers and acquisitions, securities law, taxation law, and TMT law have been recorded in the 'News Updates' segment to keep the readers abreast of latest legal developments.

Lastly, the section 'Events at RFMLR' provides the readers with a detailed note on the events recently organized by the editorial board. This section provides the readers a comprehensive insight into the Freshers' Article Writing Competiton, 2023, and the Workshop On Demystifying M&A Transactions: Cross-Border Mergers And Acquisitions: Critical Analysis Of Issues And Challenges organized by the editorial board recently.

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



HIGHLIGHTS

1. RESOLUTION PLAN PROPOSED BY ADANI PORTS SEZ LTD. FOR KARAIKAL PORTS PVT LTD. GIVEN GO AHEAD BY NCLT

BY DHIREN GUPTA

The petition in Omkara Assets Reconstruction Pvt. Ltd. v Karaikal Port Pvt. Ltd. was heard by the Chennai Bench of the National Company Law Tribunal (NCLT), and the resolution plan that Adani Port and SEZ Ltd. had proposed for Karaikal Port Pvt. Ltd. was approved by the bench. The Adani Port and Special Economic Zones Limited is a business that was founded by Mr. Gautam Adani and is currently a subsidiary of the Adani Group. It owns domestic ports in India in the states of Gujarat, Maharashtra, Goa, Kerala, Andhra Pradesh, Tamil Nadu, and Odisha. These ports are spread out across the country.

Omkara Assets Reconstruction Pvt. Ltd., a financial creditor, submitted a petition in accordance with Section 7 of the Insolvency and Bankruptcy Code, 2016 (IBC) against Karaikal Port Pvt. Ltd., requesting that the Corporate Insolvency Resolution Process (CIRP) be initiated (Corporate Debtor). On April 29, 2022, the Adjudicating Authorities gave their approval to the petition and began the CIRP proceedings against the Corporate Debtor.
The Resolution Professional was in possession of resolution plans provided by (i) Adani Port and SEZ Ltd. and (ii) Vedanta Ltd. The Resolution Plan proposed by Adani Port and SEZ Ltd. (the Winning Resolution Applicant) was given a full vote of confidence by the Committee of Creditors, which resulted in a unanimous vote of approval. Following that, on March 31st, 2023, the Adjudicating Authority gave its approval to the resolution plan that Adani Port and SEZ Ltd. had submitted.

Both the fair value of the Corporate Debtor, which was determined to be Rs. 1215,88,27,500/-and the liquidation value, which was determined to be Rs. 822,18,01,500/-, were calculated. The Resolution Plan for Adani proposes to invest Rs. 1,485 Crores as an upfront amount into the Corporate Debtor. The Resolution Plan is valued at Rs. 1,583,06,53,357/- towards the discharge of claims of the creditors. It is requested that the Financial Creditors be paid Rs. 1580,00,00,000/- in contrast to an admitted claim amount of Rs. 2959,29,25,467/-. It is requested that the full amount of the admitted claims made by Workers, Workmen, Statutory Authorities, and Government Bodies be paid out to those parties. Although it is requested that the remaining Operational Creditors be paid Rs. 213,60,000/- as opposed to the admitted claim amount of Rs. 1750,90,757/-. The total amount that will be paid to the other creditors is NIL.

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2. NSE CO-LOCATION CASE: SUPREME COURT DECLINES TO POSTPONE SAT RULING, ORDERS SEBI TO REIMBURSE RS 300 CRORE IN EXCHANGE FEES

BY QAZI AHMAD MASOOD

In a defeat for the Securities and Exchange Board of India (SEBI), the Supreme Court has ordered the market regulator to repay Rs 300 crore in disgorgement orders deposited by the National Stock Exchange of India Ltd (NSE). In the NSE co-location lawsuit, the Supreme Court refused to stay the January SAT order. It has also served notice on the NSE in response to the market regulator's request. "The Supreme Court stated that it is issuing notice in SEBI's petition because there are some legal questions that need to be answered." The court ordered SEBI to refund 300 crores to NSE in exchange for an assurance that the money would be returned if SEBI won the appeal. Senior Counsels Arvind P Datar and Niranjan Reddy represented SEBI, and Senior Counsel Neeraj Kishan Kaul represented the NSE. The Securities Appellate Tribunal (SAT) provided significant relief to the National Stock Exchange in January when it overturned SEBI's April 2019 ruling mandating it to disgorge Rs 1,000 crore for violations of the stock exchange and clearing corporation laws. The market regulator asked NSE to disgorge Rs 624.89 crore at 12% interest per annum from April 2014 onwards in a decision delivered on April 30, 2019.

The Supreme Court also scolded the market regulator for its poor pace of probes and regulatory rulings, questioning whether it had been sleeping all along. In its judgement issued in late January, the SAT bench, comprised of Justices Tarun Agarwala and MT Joshi, chastised Sebi for neglecting to conduct an investigation. "We must observe that when serious allegations were made against a first-level regulator, namely, the NSE, SEBI should have been proactive and conducted the investigation seriously. The bench took notice. SEBI had taken a cautious approach and, in fact, was putting a protective cover over NSE's alleged wrongdoings." Only after questions were put on the floor of Parliament did SEBI wake up and launch an investigation. The investigation's scope was limited. The tribunal bench did not stop there. "In our opinion, given the gravity of the alleged charges, SEBI should have conducted its own investigation/inquiry rather than delegating it to the NSE." It is unusual and illogical that SEBI directed NSE to initiate an investigation into itself. It is obvious that a casual approach was taken.

In the co-location fraud, traders installed their servers adjacent to the exchanges, giving them an unfair edge in terms of accessing and benefiting from data.

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3. KARNATAKA HC QUASHES AMENDMENT TO RULE 89(4)(C) AND HELD THE RULE AS ULTRA-VIRES AND VIOLATIVE OF ARTICLES 14 AND 19 OF THE CONSTITUTION OF INDIA

BY RAGHAV SEHGAL

The Hon'ble Karnataka High Court on 16 February 2023 in the case of M/s. Tonbo Imaging India Pvt Ltd v. Union of India has held that Rule 89 (4)(c) of the Central Goods and Service Tax Rules, 2017 (CGST Rules) which restricts the exports made without payment of tax (i.e., under Letter of Undertaking model (LUT Model) to 1.5 times value of like goods supplied domestically is unconstitutional and ultra vires of the provisions of the GST law.

The Petitioner company was involved in the business of the development of micro-optic designs for real-world applications. Since, exports made by the Petitioner were "zero-rated supply" under Section 16 of the Integrated Goods and Services Tax Act, 2017 (IGST Act), the Petitioner filed refund applications for the months of 2019 and March 2020 on 25 May 2020, 27 May 2020, and 28 May 2020. The Central Board of Indirect Taxes and Customs (CBIC) vide Notification No. 16/2020 Central Tax dated March 23, 2020, amended Rule 89(4)(c) of the CGST Rules, which restricted the refund of exports made through LUT to a maximum of 1.5 times the value of like goods domestically supplied by the same or, similarly placed supplier.

The Karnataka High Court on a challenge filed to this rule held that on a combined reading of Section 54 of the CGST Act and Section 16 of the IGST Act, it can be said that intention of making exports zero-rated is to make the entire supply chain of exports tax-free. However, Rule 89(4)(c) restricts the refund in case of export made through the LUT model to 1.5 times the value of like goods domestically supplied, which is ultra vires in view of the well-settled principle of law that rules cannot override the parent legislation.

The Court further observed that Rule 89(4)(c) of the CGST Rules contains words "like goods" and "similarly placed supplier," which are not defined anywhere in the CGST Act or IGST Act or rules made thereunder and further observed that in the case where the domestic turnover is nil for a particular period or very less, the quantum of refund becomes nil or negligible where the exports were made under LUT model, thereby clearly cutting down the principle of zero-rating as specified in Section 16 of the IGST Act, 2017 which would mean that the taxes on exports do not get refunded adequately. On the basis of the above reasoning, the Karnataka High Court held Rule 89(4)(c) is ultra vires the provision of the IGST Act and CGST Act, including being violative of Articles 14 and 19 of the Constitution and the provision is arbitrary, unreasonable and vague.

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4. NCLT APPROVES THE MERGER BETWEEN HDFC AND HDFC BANK

BY AKSHATA SINGHVI

The National Company Law Tribunal (NCLT) announced that it has approved the merger of HDFC and HDFC Bank on Friday. The Reserve Bank of India, the Securities and Exchange Board of India (SEBI), the Pension Fund Regulatory and Development Authority (PFRDA), the Competition Commission of India (CCI), as well as the Indian stock exchanges, Bombay Stock Exchange and National Stock Exchange, have already given their clearance to HDFC Ltd. In order to get shareholder approval for the planned merger, NCLT has also granted the go-ahead to organize a shareholders' meeting.

This merger of HDFC and HDFC Bank is anticipated to be complete by the second or third quarter of FY24. HDFC Bank said in April of last year that parent HDFC will merge with the bank to facilitate seamless home loan service and leverage on the substantial base of over 68 million customers of HDFC Bank and among other things increase the rate of credit growth in the economy.

The planned merger would increase the amount of credit available to the economy. Additionally, it will make it possible to underwrite larger-ticket loans, such as those for infrastructure, which the nation urgently needs. In accordance with the plan, HDFC owners will exchange 25 HDFC shares with a face value of 2 for 42 HDFC Bank shares with a face value of 1 apiece. The HDFC ownership in HDFC Bank would also be eliminated in accordance with the merger plan.

Following the merger, existing HDFC shareholders will own 41% of the former and the public would own 100% of HDFC Bank. A gratifying client connection will be made possible by the united business, which will combine the complementing qualities of the two organizations. Following the amalgamation, seamless mortgage offerings would be made to HDFC Bank customers. According to a regulatory filing made on April 4, HDFC Bank would also make use of the long-tenor mortgage relationship to provide a variety of credit and deposit products made possible by deeper insights into the customer life cycle.

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5. SEBI STANDARDISES PROVISIONS FOR VALUATION OF ALTERNATIVE INVESTMENT FUNDS

BY TARPAN SONI

The Securities and Exchange Board of India (SEBI) has amended the rules governing Alternative Investment Funds (AIFs) in order to harmonize procedures for investment appraisal and dematerialization of AIF units. The market regulator also changed the regulations regulating certification requirements for key Investment Manager staff, transactions with associates, and the possibility to sell unliquidated assets to a new AIF scheme. SEBI Chairperson Madhabi Puri Buch made the announcement during a press conference, along with major decisions on the ESG framework, mutual funds, and shareholder empowerment. The SEBI Board adopted recommendations to define a framework for AIFs to conduct investment portfolio valuations under the changes. The new guidelines will also specify the independent valuer's qualifying requirements for appraising the investment portfolio of AIFs. Under the new guidelines, an independent valuer will assess the investment portfolios of Category III AIFs in unlisted securities and listed debt instruments, and AIF managers will be held accountable for accurate and fair valuation. To facilitate monitoring and administration by stakeholders and to protect investors from operational and fraud risk, the board approved mandating that all new schemes and existing schemes of AIFs with a corpus greater than Rs 500 crore dematerialize their units by October 31, 2023. Existing AIF plans with a capital of less than Rs 500 crore must dematerialize their units by April 30, 2024.

The Board also accepted a proposal to replace the current minimum experience requirement as an eligibility criterion for the Manager of the AIF's primary investment team with a complete certification requirement. The certification requirement will also apply to the AIF's compliance officer. A proposal to require 75% of investors by value to authorize the purchase or sale of potentially conflicting interests was approved. The rule would apply to transactions made by an AIF from or to AIF associates, or schemes of AIFs managed or sponsored by the manager or sponsor or their associates, or an investor who has committed to more than 50% of the corpus of the scheme of AIF. To give AIFs more flexibility in dealing with investments that cannot be sold due to a lack of liquidity during the winding-up process, the Board approved a proposal to allow AIFs to either sell such investments to a new scheme of the same AIF (Liquidation Scheme) or distribute unliquidated investments in-specie, in the prescribed manner, and subject to 75% investor approval by value. In the absence of investor approval during the liquidation period, unliquidated investments must be dispersed to investors in-specie. If an investor refuses to accept an in-specie payout, his or her investment will be wiped off.

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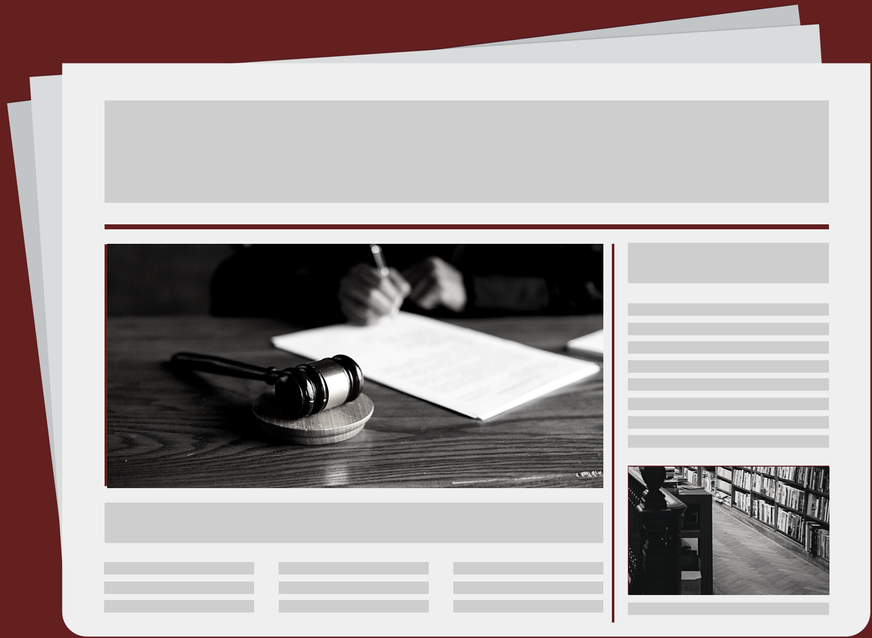

NEWS UPDATES

ALTERNATE DISPUTE RESOLUTION (ADR)

BY DHIREN GUPTA

1. UPDATION APPLICATION' SEEKING TO CHANGE THE NUMBER OF COUNTER-CLAIMS IN ARBITRAL PROCEEDINGS, IS AN APPLICATION FOR 'AMENDMENT': DELHI HIGH COURT

In, NTPC Ltd vs. Larsen and Toubro Limited & Anr., the Delhi High Court has ruled that where a party has filed an application seeking to update/revise its counter claims before the Arbitral Tribunal, intending to primarily alter/change the amount of the counter-claims, the said application was, in effect, an application for amendment of the counter-claims, even though it was termed as an 'updation application'. The bench of Justice V. Kameswar Rao was dealing with a petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 (A&C Act), challenging the Arbitral Tribunal's order where it had rejected the party's application seeking updation/revision of its counter claims on the ground that the same was filed belatedly.

The Court in conclusion noted that the Tribunal in its order had drawn a distinction between the delay in making an application for amendment/updation against a claim itself being barred by limitation. The Court reckoned that the Tribunal had only rejected the application for amendment on the ground that the same was made after a long lapse of time. Further, the issue of limitation with respect to the merits of the counter-claims sought to be amended/updated had not been referred to by the Tribunal at all, it noted. Since the said counter claims of NTPC had not been decided finally on its merits, the order did not fulfil the requirements of an award or an interim award under the A&C Act, it ruled. Thus, the petition under Section 34 was not maintainable against the said order, the Court held.

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2. ARBITRATOR CAN'T APPLY PRINCIPLES OF EQUITY IN ABSENCE OF AUTHORIZATION OF PARTIES: BOMBAY HIGH COURT

The Bombay High Court has reiterated that the doctrine of severability can apply to arbitral awards, so long as the objectionable part can be segregated. The Court added that if the award is partially set aside by applying

ALTERNATE DISPUTE RESOLUTION (ADR)

Tthe doctrine of severability, the same would not amount to modification or correction of the errors of the arbitrator. The bench further held that the Arbitral Tribunal cannot decide an issue in violation of the terms of the agreement between the parties, by applying the principles of equity. This is so especially when the parties have not expressly authorized the arbitrator to decide the matter ex aequo et bono or as amiable compositeur under Section 28(2) of the Arbitration and Conciliation Act, 1996 (A&C Act), the bench added.

Referring to the Bombay High Court's decision in Vilayati Ram Mittal Pvt Ltd. vs. Reserve Bank of India (2017), the Court observed that the arbitrator is a creature of the contract between the parties and thus, he cannot ignore the specific terms of the contract. If the arbitrator issues a direction in violation of the same, he travels beyond his jurisdiction, the Bombay High Court in Vilayati Ram Mittal (2017) held. While concluding that the Arbitrator did transgress his jurisdiction which he derived as per the terms of the agreement, the Court upheld the award rejecting the specific performance of the agreement, and set aside the award to the extent it directed a refund of money to the petitioner.

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3. NOT NECESSARY FOR PARTY TO RAISE OBJECTION REGARDING UNILATERAL APPOINTMENT BEFORE THE ARBITRATOR, CAN BE RAISED IN S. 34 PETITION: BOMBAY HIGH COURT

In, Hanuman Motors Pvt Ltd & Anr. vs. M/s Tata Motors Finance Ltd, the Bombay High Court has ruled that when one of the parties to the dispute has an overwhelming and unilateral power to appoint a Sole Arbitrator, the same completely vitiates such an appointment as the same is hit by Section 12(5) read with the Seventh Schedule of the Arbitration and Conciliation Act, 1996 (A&C Act). While dealing with a petition filed under Section 34 of the A&C Act, the Court held that it was not necessary for the petitioner to raise an objection regarding the unilateral appointment before the arbitrator, to be able to raise the same in a Section 34 petition to challenge the arbitral award.

Perusing the facts of the case, the Court took note that the petitioner, Hanuman Motors, sent various communications to the arbitrator, taking a stand that it did not consent to the arbitration proceedings, sufficiently demonstrating that it did, indeed, object to the arbitrator entering upon the reference. While holding that the unilateral appointment of the Sole Arbitrator completely vitiated the award, the Court allowed the petition and set aside the award.

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4. RECOURSE TO SECTION 34(4) OF THE A&C ACT CAN'T OPT FOR CONSIDERATION OF NEW MATERIAL EVIDENCE: DELHI HIGH COURT

In, Inox Air Products Pvt. Ltd. v. Air Liquide North India Pvt. Ltd., the High Court of Delhi has held that recourse to Section 34(4) of the A&C Act cannot be taken to permit the arbitral tribunal to consider the material evidence which it earlier failed to consider. The bench held that Section 34(4) of the A&C Act empowers the Court deciding an application under Section 34(1) of the Act to adjourn the challenge proceedings and remit the matter back to the arbitral tribunal to allow it to eliminate the ground of the challenge, however, this power can only be exercised to allow the tribunal to provide for gaps in the reasoning or cure any other curable defect, however, it does not extend to allow the tribunal to give a new finding or a fresh decision.

The Court held that failure of the arbitral tribunal to consider material evidence is not a curable defect and the recourse to Section 34(4) would not be permissible in such a situation as the new evidence may have the potential of changing the outcome of the dispute which is beyond the powers under Section 34(4) as the tribunal cannot overturn its decision. It held that permitting an arbitral tribunal to consider the evidence that it originally failed to consider would be akin to a remand which is prohibited under the law. Accordingly, the Court dismissed the application filed by the respondent.

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5. PARTY CAN'T RESTRICT LIMITATION PERIOD FOR INVOKING ARBITRATION CONTRARY TO LIMITATION ACT: DELHI HIGH COURT

In, Municipal Corporation of Delhi vs. Natraj Construction Company, The Delhi High Court has ruled that, in view of Section 28 of the Indian Contract Act, 1872, a party cannot be permitted to restrict the period of limitation for invoking arbitration, in contravention to the limitation period provided by law. The Court observed that a lesser period of limitation provided under the Contract between the parties would be hit by Section 28. While dealing with an appeal filed under Section 37 of the Arbitration and Conciliation Act, 1996 (A&C Act), the Court dismissed the contention of the appellant/award debtor that the claims raised by the claimant were time-barred.
Concluding that the chargesheet filed by the CBI was not in relation to the Work Order under consideration and that the pendency of CBI proceedings was in relation to a different Work Order, the Court dismissed the appellant's contention that the award was in conflict with the public policy of India.

The Court also referred to the Supreme Court's decision in Swiss Timing Limited vs. Commonwealth Games 2010 Organizing Committee (2014), where it was held that there is no inherent risk of prejudice to the parties in permitting arbitration to proceed simultaneously with the criminal proceedings.

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COMPETITION LAW

BY ISHANI CHAKROBARTY

1. COMPETITION COMMISSION TO CONDUCT INQUIRIES AGAINST BIG TECH FIRMS

Competition Commission is conducting inquiries against Amazon, Flipkart, Zomato, Swiggy, BookMyShow, Apple, WhatsApp, Facebook (Meta), and Google for alleged anti-competitive practices, the government said.
To a query in the Rajya Sabha on whether the government is aware of the fact that anti-competitive practices are indulged by big tech companies like Amazon, Flipkart, Google, Meta, Twitter, Apple, Facebook, Twitter, and Google, etc in the country, Union Minister Nirmala Sitharaman replied in the affirmative.

The Finance and Corporate Affairs Minister said the Competition Commission of India (CCI) after conducting inquiries in three different cases, passed orders in the matter related to Google on January 31, 2018, October 20, 2022, and October 25, 2022. In the matter related to MakeMyTrip-Go and OYO, the order was passed on October 19, 2022.

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2. THE MCA-APPOINTED TEN-MEMBER COMMITTEE ON DIGITAL COMPETITION LAW (CDCL) TO BEGIN DELIBERATIONS ON THE DIGITAL COMPETITION ACT

After completing wide-ranging stakeholders' consultations, the MCA-appointed ten-member Committee on Digital Competition Law (CDCL) will begin deliberations on the contours of the proposed Digital Competition Act this Friday. So far, in its three meetings since its constitution on February 6, the panel has heard the representatives from various Big Tech companies, and industry associations including Digital News Publishers and digital start-ups.
It may be recalled that CDCL has been tasked to examine the need for an ex-ante regulatory mechanism for digital markets through separate legislation. It has also been tasked to prepare a draft Digital Competition Act. The panel will also have to review whether existing provisions in the Competition Act and the Rules and Regulations framed under it are sufficient to deal with the challenges that have emerged from the digital economy.

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COMPETITION LAW

3. NCLAT UPHOLDS RS 1,337 CRORES PENALTY ON GOOGLE IMPOSED BY THE COMPETITION COMMISSION OF INDIA

The NCLAT on Wednesday upheld the order of CCI imposing a penalty of Rs 1,337.76 crore on Google in a case related to abuse of its dominant position in Android. The tech giant has been given 30 days by National Company Law Appellate Tribunal to pay the fine and implement the order.

NCLAT said that the investigation by the Competition Commission of India into Google was not in violation of the principles of natural justice. A two-member bench of NCLAT said it was unable to accept the contention that CCI order on Google is "replete with confirmation bias". NCLAT gave partial relief to Alphabet Inc's Google by setting aside four of the CCI directives in the case related to the abuse of its dominant position in Android.

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4. RAJYA SABHA PASSES THE COMPETITION AMENDMENT BILL

Having been cleared in both houses of parliament, the Bill is set to become law once it gets presidential assent. Lok Sabha passed the Bill last week without much debate amid ruckus in the Parliament. The Competition Commission of India (CCI), the regulator, is now working on rules and regulations needed to give effect to the new provisions added to the law, especially, the scheme for commitment and settlement meant to reduce litigation by way of negotiated settlements. This scheme is available to cases of anti-competitive agreements and abuse of dominance, but not to cartels.

Also, the new provisions expand the scope of CCI's merger regulation by bringing deals worth more than ₹2,000 crores requiring regulator clearance. A highlight of the Bill is a change in the penalty provision. The Bill seeks to define 'turnover' for the purpose of penalty as global turnover derived from all the products and services by a person or an enterprise. The idea is to levy a penalty as a percentage of the global turnover of the offending company, moving away from the current practice of levying a part of the local or relevant market turnover as a penalty.

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INSOLVENCY LAW

BY QAZI AHMAD MASOOD

1. NCLAT: PROVISIONS OF THE INSOLVENCY AND BANKRUPTCY CODE DO NOT APPLY TO DEBT RECOVERY PROCEEDINGS

The National Company Law Appellate Tribunal ruled that the provisions of the Insolvency & Bankruptcy Code (IBC) cannot be used to recover debts because the purpose of this special code is to help a debtor company get back on its feet. The appeal panel overturned an order of the National Company Law panel (NCLT) to commence bankruptcy proceedings against Coppertun Brewing, observing that the NCLT "clearly fell in error" in admitting the plea "while turning a blind eye" on evidence of pre-existing disagreements between the parties.

When an operational creditor seeks to initiate an insolvency process against a Corporate Debtor, the National Company Law Appellate Tribunal (NCLAT) bench of Chairperson Justice Ashok Bhushan and Member Barun Mitra stated that it can only be done in clear cases where there is no real dispute between the two. "What also weighs heavily on our minds is that the provisions of the IBC cannot be turned into a debt recovery proceeding as the underpinning of this special code is to bring a Corporate Debtor on its feet," the NCLAT order said.

This was contested before the appellate tribunal NCLAT by a director of the brewing firm, who claimed that there was a pre-existing issue with the operational creditor, who had rented its site to the company and afterward approached the NCLT, claiming default.

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2. INSOLVENCY AND BANKRUPTCY BOARD OF INDIA IS ELIGIBLE FOR INCOME TAX EXEMPTION ON GRANT-IN-AID, FINE, FEE, AND INTEREST INCOME: CBDT

The Central Board of Direct Taxes (CBDT) has announced that the Insolvency and Bankruptcy Board of India will be eligible for income tax exemption under section 10 clause (46) of the Income-tax Act of 1961. The exemption will apply to grants-in-aid obtained from the Central Government, fees and fines paid under the Insolvency and Bankruptcy Code, 2016, and interest income accrued by the Insolvency and Bankruptcy Board of India.

INSOLVENCY LAW

The Board will be eligible for the income tax exemption only if certain conditions are met. To begin with, the Insolvency and Bankruptcy Board of India is prohibited from engaging in any commercial business. Second, the activities and type of the defined income must be consistent over fiscal years. Third, the Insolvency and Bankruptcy Board of India must file an income return in line with clause (g) of sub-section (4C) of section 139 of the Income-tax Act, 1961.

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3 NCLT ALLOWS IPRS TO ABANDON ITS CASE AGAINST ZEE

The National Company LaThe National Company Law Tribunal (NCLT) has allowed the Indian Performing Right Society Ltd (IPRS), a Zee Entertainment Enterprises operating creditor, to withdraw its insolvency petition. The transaction brings the corporation one step closer to a $10 billion media platform created through a merger with a Sony Group entity. "In light of the settlement agreement entered into between the parties, in which the corporate debtor (ZEE) has agreed to pay the due amount payable to the operational creditor, in this case, IPRS, permission is granted and the company petition is disposed of as withdrawn," said the NCLT's Mumbai bench, led by Justice H.V. Subba Rao. IPRS filed a default claim of 211.41 crores with the NCLT in January. The media company told the exchanges that Zee and IPRS have peacefully settled all of their issues and claims. ZEE is facing two further insolvency proceedings, one by IndusInd Bank Ltd and the other by Axis Finance Ltd. The NCLT granted IndusInd's insolvency petition against ZEE under Section 7 of the Insolvency and Bankruptcy Code (IBC).

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4. NCLAT REJECTS SHAREHOLDERS' PETITION TO STOP MCDOWELL HOLDINGS' INSOLVENCY PROCEEDINGS

The National Company Law Appellate Tribunal (NCLAT) has rejected a petition filed by McDowell Holdings Ltd shareholders challenging the firm's beginning of the corporate insolvency resolution procedure (CIRP). A two-member appellate tribunal court affirmed the ruling of the Bengaluru bench of the National Company Law Tribunal (NCLT), which instructed to commence CIRP on April 8, 2022, following the request submitted by its

financial creditor Sunstar Hotels and Estates. The NCLAT had been petitioned by nine shareholders who collectively own more than 15% of McDowell Holdings Ltd (MHL).

While dismissing the petition, the NCLAT stated that the shareholders "do not have any 'Locus,' and thus the current appeals are not maintainable." According to the appellate tribunal, the NCLAT had previously "held that an investor in a Corporate Debtor cannot claim to be an 'aggrieved person' for preferring an appeal against an order against an insolvency petition." The shareholders, who filed an intervention application before NCLT as well, alleged before NCLAT that Sunstar Hotels and Estates initiated "illegal and fraudulent" CIRP with mala-fide and ulterior motives to defraud various stakeholders, including the Appellants herein, in "connivance with the 2nd Respondent (MHL)."

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5. NCLT APPROVES GAIL'S ACQUISITION OF JBF PETROCHEMICALS

The National Company Law Tribunal (NCLT) has approved GAIL's acquisition of insolvent private-sector chemical manufacturer JBF Petrochemicals Ltd for Rs 2,079 crore, allowing the state-owned corporation to expand its petrochemical reach. GAIL (India) Ltd stated in a filing that the Ahmedabad bench of the NCLT has approved the resolution plan it presented after JBF was auctioned off by lenders to recover unpaid debts.

IDBI and other banks gave money to JBF to develop the PTA plant for USD 603.81 million, with BP providing technology and OMPL providing 50,000 tonnes of paraxylene feedstock per month. The plant, which is a backward integration project for JBF Industries' polyester factories, was commissioned in 2017 but ceased operations the following year after the company defaulted on its financing. Due to the default, the lenders dragged it into corporate insolvency and bankruptcy. (IBC). Lenders and operational creditors, including employees, claimed Rs 7,918 crore in debt, but only Rs 5,628 crore in debt was admitted, including Rs 712 crore owed to operational creditors.

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INTELLECTUAL PROPERTY LAW

BY DHIREN GUPTA

1. STANDARD ESSENTIAL PATENT OWNERS CAN PRAY FOR INTERIM AND FINAL INJUNCTIVE RELIEF IF INFRINGER DEEMED TO BE AN 'UNWILLING LICENSEE': DELHI HIGH COURT

Observing in Intex Technologies (India) Ltd v. Telefonaktiebolaget L M Ericsson (PUBL), that the new technology has blurred national boundaries and given a boost to international trade as well as infringement, the Delhi High Court has said that global doctrinal interdependence, referring to foreign Court decisions, is an effective and practical way of facilitating harmonization of basic principles of laws, especially when there is nothing contrary in the national laws. Intex's principal argument before the court was that the concept of Standard Essential Patents is unknown to Indian law and that since the Standard Setting Organizations do not check which patents are actually essential and the declarants do not provide any proof of essentiality, the patents in question cannot be presumed to be standard or essential.

It was further argued that a Single Judge could not have directed it to pay as well as deposit royalty at the interim stage since Standard Essential Patent owners' only entitlement, even according to the law laid down by foreign Courts, are royalties at the end of the trial.
The division bench also agreed with the Single Bench's conclusion that just because a revocation petition had been filed before IPAB, it cannot be presumed that a credible challenge had been raised by Intex qua the validity of the suit patents. Dismissing the appeal filed by Intex, the court directed it to pay the entire royalty amount to Ericsson within four weeks.

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2. FEVICOL V. TICKAWOO: BOMBAY HIGH COURT FINDS NO PRIMA FACIE "DECEPTIVE SIMILARITY" IN LOGOS, GRANTS INTERIM RELIEF FOR CERTAIN PRODUCTS

In, Pidilite Industries Limited v. Chiripal Industries Limited, the Bombay High Court recently held that there is no prima facie deceptive similarity between Fevicol manufacturer Pidilite Industries' logo having two elephants against the backdrop of a sunset and Chiripal Industries' logo containing the word Tikawoo with the device of a rhino against the backdrop of sun. The court, however, granted an interim injunction in favor of Pidilite restraining

INTELLECTUAL PROPERTY LAW

Chiripal from using marks similar or identical to the plaintiff's "HEATX", "LW+", and "LW" marks.

The plaintiff Pidilite Industries claimed infringement and passing off with respect to its registered trademarks HEATX, LW+, LW, and DR. FIXIT with an image of a man wearing a yellow construction helmet and copyright over a logo having two elephants in the backdrop of sunset pulling in the opposite direction. Further, the overall color scheme of the defendant's product with the use of the impugned mark HEAT-TIK is likely to create confusion in the minds of the consumer when compared with the plaintiff's HEATX presented in a specific colour scheme, the court held.

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3. DISPUTE OVER OWNERSHIP OF FACEBOOK GROUP NOT A TRADEMARK DISPUTE: BOMBAY HIGH COURT

In, The Himalayan Club v. Kanwar B. Singh & Ors., the Bombay High Court recently held that the dispute over ownership of a Facebook Group is not a trademark dispute and can be decided by the Civil Court. The bench, set aside the Civil Court's decision that it did not have jurisdiction over the dispute over ownership of the Facebook Group called The Himalayan Club. The court noted that the appellant has not claimed the Facebook Group to be a registered trademark that the respondent infringed. Rather, it sought a declaration that it is the owner of the Facebook Group. The court said that the Facebook Group is a website and a social media platform for members to exchange ideas etc. and hence it is not a trademark or copyright.

Therefore, the court held that the Civil Court's conclusion was misguided and cannot be accepted. The court concluded that the Civil Court had jurisdiction in this matter and quashed the impugned order.

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4. DELHI HIGH COURT DISMISSES PLEA OF INVALIDITY AGAINST BK'S REGISTERED TRADEMARK 'BURGER KING'

In, Burger King Corporation v. Ranjan Gupta and others. The Delhi High Court has dismissed a claim of invalidity

against Burger King Corporation (BKC)'s registered trademark 'Burger King'. In response to a trademark infringement suit filed by the Burger King Corporation in 2018, the defendants argued that BKC's registered trademark is liable to be canceled. The court considered whether the case of the defendants on this account is "prima facie tenable". The bench said the defendants have failed to place any material in support of their submission that the trademark 'Burger King' is either generic or common to trade.

It may be relevant to note that as a consequence of the preparatory work carried out by the plaintiff, the first BURGER KING restaurant was opened in India on 9th November 2014 and as of date there are more than 300 BURGER KING Restaurants in India. The court also said the defendants are estopped from taking a plea that the trademark 'BURGER KING' is generic and common to trade when they have themselves sought registration of the said marks.

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5. YOUTUBER DHRUV RATHEE TO REMOVE 'TARGETED' REFERENCES TO 'REAL FRUIT JUICE' FROM HIS VIDEO: CALCUTTA HIGH COURT GRANTS INTERIM RELIEF TO DABUR

In, Dabur India Limited v. Dhruv Rathee & Ors., Dhruv Rathee's recent video analyzing the health effects of fruit juices has landed the YouTuber in a legal battle with Dabur, which claims that he specifically disparaged their packaged fruit products 'Real' juice. The Calcutta High Court on Wednesday granted interim relief to the company and directed Rathee to remove the offending portions from the video. The bench observed that Prima facie, at the ad interim stage even though the underlying intent of the impugned video may not be objectionable, in making repeated direct and brazen references to the product Real of the petitioner, the Lakshamanrekha or the Rubicon has been crossed. In my view, the petitioner's product Real has been specifically targeted, denigrated, and discredited in the impugned video.

The court thus directed Rathee to upload the impugned video only after removing the offending portions which make any reference to Dabur's product Real and also not to make any use of the trademark, copyright content, trade dress, packaging label, and logo of the petitioner's Real brand of products.

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MERGERS & ACQUISITIONS

BY QAZI AHMAD MASOOD

1. NCLT APPROVES MERGER OF HDFC AND HDFC BANK

The merger of Housing Development Finance Corporation (HDFC), HDFC Investments, and HDFC Holdings with HDFC Bank has been approved by the National Company Law Tribunal (NCLT). The merger was approved by the boards of the two companies in April 2022, and it has since received approval from the Reserve Bank of India (RBI), Securities and Exchange Board of India (SEBI), Pension Fund Regulatory and Development Authority (PFRDA), Competition Commission of India (CCI), and stock exchanges. The NCLT also agreed to schedule a shareholders' meeting in order to secure shareholder approval for the proposed merger, which is expected to be finalized by Q3 FY24.

HDFC stockholders will receive 42 shares of HDFC Bank in exchange for 25 shares of HDFC under the amalgamation arrangement. Following the merger, HDFC Bank will be entirely owned by public shareholders, with HDFC stockholders owning 41%. Furthermore, HDFC Bank distributed 7.9 lakh shares to its employees as part of the Employees Stock Options Scheme. The bank's share capital has now reached Rs 558 crore. Meanwhile, HDFC's board of directors has announced that it will consider raising up to Rs 57,000 crore through the issuance of unsecured redeemable non-convertible debentures in multiple tranches.

Read More.

2. HYUNDAI HAS SIGNED A DEAL SHEET TO PURCHASE GM'S TALEGAON FACTORY

On March 13, Hyundai Motor India Limited (HMIL) announced the signing of a 'Term Sheet' for the potential acquisition of selected assets relating to General Motors India's Talegaon Plant in Maharashtra. The Term Sheet addresses the proposed acquisition of land and buildings, as well as some machinery and equipment for manufacturing, at General Motors India's Talegaon Plant.
"The proposed acquisition is subject to the signing of the 'Definitive Asset Purchase Agreement,' as well as the fulfillment of conditions precedent and the receipt of regulatory approvals from relevant government authorities and all stakeholders involved in the acquisition," the business said in a statement. After more than two years of waiting for crucial licenses, China's Great Wall Motor (GEM) recently withdrew its attempt to acquire the factory.

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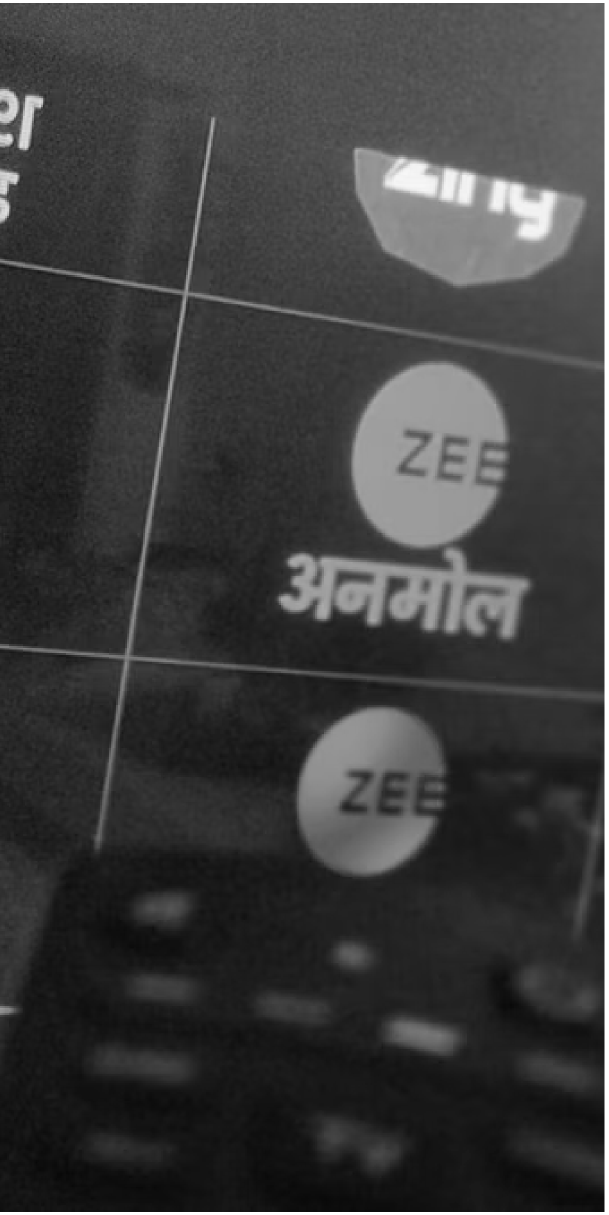
MERGERS & ACQUISITIONS



3. AXIS BANK HAS COMPLETED ITS ACQUISITION. CITIBANK'S CONSUMER BUSINESS IN INDIA

Axis Bank has announced the completion of its acquisition of Citibank's India consumer business and non-banking financial company (NBFC) consumer division. The deal was finalized for Rs 11,603 crore after an appraisal of the closing position of assets, assets under management (AUM), and liabilities on January 31, 2023. According to Axis Bank's exchange report, "Given the transaction's structure, the aforementioned cash consideration, along with any true up or true down, shall be accounted for as goodwill and other intangibles, which will be completely amortized for accounting purposes in FY2023."

In March of last year, Citigroup-owned Citibank announced the sale of its consumer banking division to Axis Bank, which included credit cards, retail banking, wealth management, and consumer loans. The transaction was part of a Rs 12,325 crore strategy to exit consumer franchises in 13 nations encompassing Australia, Bahrain, China, India, Indonesia, South Korea, Malaysia, Philippines, Poland, Russia, Taiwan, Thailand, and Vietnam.

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4. ROCKWELL ACQUIRES KNOWLEDGE LENS MUMBAI, BASED IN BENGALURU

Rockwell Automation announced the acquisition of Knowledge Lens, a Bengaluru-based enterprise insights company, for an undisclosed sum. According to a statement, the acquisition of the company, which was created in 2013, would help Rockwell extend its capabilities to harness the potential of data, enable autonomous manufacturing, and drive continuous optimization for additional manufacturers. Knowledge Lens, the most recent acquisition, will be integrated into Rockwell's digital services firm Kalypso in order to speed transformational outcomes for more manufacturers throughout the world, according to the company.

"The acquisition of Knowledge Lens strengthens our ability to help more manufacturers around the world discover and use the hidden insights in their data to drive game-changing value for their businesses," said Frank Kulaszewicz, Rockwell's senior vice president of the Lifecycle Services sector. Rockwell's head of corporate strategy, Veena Lakkundi, told PTI recently that the company was actively exploring acquisitions in India to assist increase its capabilities. Apart from outright purchases, Lakkundi stated that the company is considering early-stage

investments in companies and would explore options to collaborate with startup accelerators. She also stated that Rockwell's primary focus areas in the country are life sciences, electronic vehicles, automobiles, food and drinks, and consumer products.

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5. INDIGRID HAS COMPLETED ITS ACQUISITION OF KHARGONE TRANSMISSION

India Grid Trust (IndiGrid) has announced the completion of its acquisition of 100% "shareholding and economic interest" in Khargone Transmission Ltd from Sterlite Power Transmission Ltd. (SPTL). IndiGrid is India's first publicly traded power sector infrastructure investment trust (InvIT), and STL is one of its sponsors. "IndiGrid announces the completion of its acquisition of 100% ownership and economic interest in Khargone Transmission Ltd (KTL) from SPTL," the company stated in a statement. "The addition of KTL to the portfolio at an enterprise value of Rs 15 billion will bring IndiGrid's assets under management to Rs 227 billion and its overall asset base to 8,416 km of transmission lines and 17,550 MVA of transformation capacity," the firm said. The transaction was paid for via a mix of equity, internal accruals, and debt.

IndiGrid and SPTL signed a binding share purchase agreement for the transaction on January 21. On February 23, IndiGrid got permission from its unitholders. KTL is an Inter-state Transmission System Tariff Based Competitive Bidding (TBCB) project that began commercial operations in December 2021. It is a Build-Own-Operate-Maintain (BOOM) project with a 32-year transmission service agreement life and a levelised tariff of Rs 159.1 crore. The asset runs through Madhya Pradesh and Maharashtra, ending at the Dhule substation of Bhopal Dhule Transmission Company Ltd. (BDTCL).

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BANKING & FINANCE

BY DHIREN GUPTA

1. BANKS MUST GIVE OPPORTUNITY OF HEARING TO BORROWERS BEFORE CLASSIFYING THEIR ACCOUNTS AS FRAUD: SUPREME COURT

In, State Bank of India v. Rajesh Agarwal and connected cases, the Supreme Court held that borrowers must be heard before their accounts are classified as fraud. The Court held that the principles of "audi alteram partem" must be read into the Circular issued by the Reserve Bank of India on the classification of bank accounts as fraud accounts. The bench noted that the classification of accounts as fraud results in serious criminal and civil consequences for borrowers; it amounts to "blacklisting" of borrowers; hence opportunity of hearing must be granted to the borrowers under the Master Directions on Fraud.

The judgement concluded with some major changes, such as, no opportunity of being heard is required before an FIR is lodged and registered, and Debarring the borrowers from accessing institutional finance results in serious civil consequences for the borrowers. The application of audi alteram partem cannot be impliedly excluded from the Master Directions on Frauds. In view of the timeline in the Master Directions on Frauds, as well as the nature of proceedings, it is reasonably practicable for the lender banks to provide an opportunity of hearing to the borrowers before classifying their accounts as fraud, and the principles of natural justice demand that the borrowers must be served notice, given an opportunity to explain the conclusions in the forensic audit report and be allowed to represent the banks and joint lenders forum before their accounts are classified as fraud. In addition, the decision to classify the account as fraudulent must be made by a reasoned order.

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2. PROPER SYSTEM AVAILABLE TO REDRESS GRIEVANCES OF HOME BUYER, NOT BANK'S RESPONSIBILITY TO GET PROJECT COMPLETED: DELHI HIGH COURT

In, the Court on Its Own Motion vs. Govt of NCT of Delhi & Ors. the Delhi High Court has said that banks cannot be loaded with the responsibility of getting the real estate projects completed and they cannot assume the role of a builder to complete the project. The division bench said that banks "can only give a red flag" to the borrower for misutilization of funds by the builder, and it is for the lenders to take appropriate legal action by approaching the civil forum to ensure that the project is completed on time.

The court added that when a builder defaults in completing a project, it is always open for the banks to approach the National Company Law Tribunal under IBC for getting an Insolvency and Resolution Professional appointed, and to take measures to ensure that the project is revived and completed since the banks are also anxious to recover their money. In view of the fact that there is a proper regimen available to redress the grievances of a home buyer and also in view of the Master Circular (Supra) issued by the Reserve Bank of India, no further Orders and directions are required to be passed in the instant petition, saying this the bench dismissed the petition.

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3. HDFC APPROVED THE ISSUANCE OF NCDS WORTH RS 57,000 CR AHEAD OF ITS MERGER WITH HDFC BANK

The board of Housing Development Finance Corp Ltd approved the issue of redeemable non-convertible debentures worth Rs 57,000 crore in various tranches on Monday. The board also approved an increase in HDFC's borrowing capacity from Rs 6 lakh crore to Rs 6.5 lakh crore. Earlier, HDFC's outstanding borrowing totals Rs 5.7 lakh crore. The said decision was taken since the outstanding borrowings of the Corporation as on date is approx. Rs. 5.70 lac crore and the Corporation would need to borrow further for its business purposes till the effective date of the merger (with HDFC Bank Ltd).

The Reserve Bank of India (RBI), the Securities and Exchange Board of India (SEBI), HDFC and HDFC Bank shareholders, the Pension Fund Regulatory and Development Authority (PFRDA), and the Competition Commission of India had previously granted HDFC the necessary approvals (CCI).

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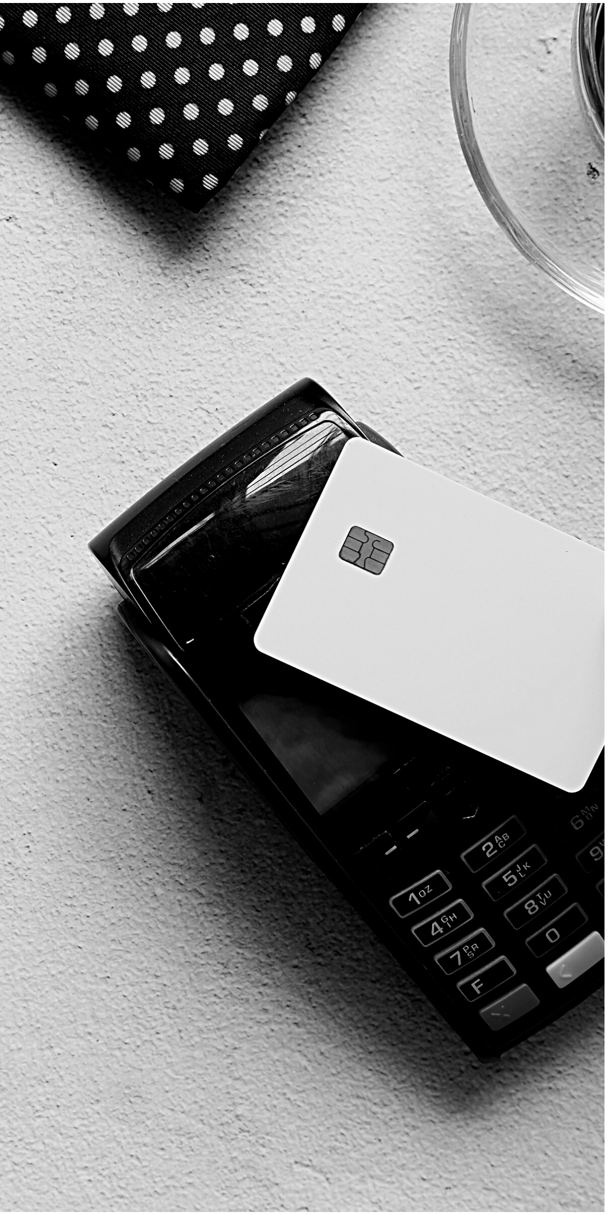
4. YES BANK SHARES IN FOCUS WITH SC LIKELY TO HEAR THE APPEAL IN AT1 BOND MATTER

Shares of Yes Bank are likely to come under focus as the Supreme Court (SC) is expected to take up the appeal in the Additional Tier 1 (AT1) bond matter soon. If the apex court rules in favor of AT1 bondholders, Yes Bank shares



could see a selloff as the verdict could erode its capital base and impede its growth prospects, say analysts. It could also impact the capital-raising prospects of other banks, particularly public sector lenders, who are large issuers of such bonds.

On January 20, the Bombay High Court (HC) turned down the decision to write off AT1 bonds worth over Rs 8,400 crore. Following this its shares had tanked close to 10 percent. Later the HC stayed the judgement for six weeks. Aggrieved by the Bombay HC's judgement, Yes Bank and the Reserve Bank of India (RBI) filed special leave petitions before the SC. On March 03, 2023, the apex court extended the stay granted by the Bombay HC. The SC is taking up the Yes Bank AT1 matter at a time when the Swiss banking regulator ordered the writing down of $17 billion worth of AT1 bonds as a reconstruction exercise of Credit Suisse ahead of its merger with UBS.

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5. UBS MOST RELIANT ON AT1 BONDS WIPED OUT IN CREDIT SUISSE TAKEOVER DEAL

UBS Group AG is more reliant for its capital on the type of risky bonds that were wiped out in the Credit Suisse Group AG takeover than any other major lender in Europe. Additional Tier 1 bonds, or AT1s, are the equivalent of about 28% of the Swiss lender's highest-quality regulatory capital, according to Bloomberg calculations. That's just slightly more than for Barclays Plc, while the average exposure among the 16 biggest banks in Europe is about 16%. The notes have been a key way for banks to bolster their financial resources because they are typically cheaper than normal equity such as shares. They were created by European regulators after the financial crisis as a way to impose losses on creditors when banks start to fail without resorting to taxpayer money.

"From a capital perspective, if AT1 funding costs rise by an extreme amount over time, we believe there may potentially arise a situation in which banks look to replace AT1 capital with CET1 capital," Goldman Sachs analysts led by Chris Hallam wrote in a note. A historic write-down of 16 billion francs ($17.2 billion) of the risky bonds issued by Credit Suisse has sent shockwaves through the market, with bondholders arguing that shareholders should have taken the first hit. Regulators in the European Union and the UK reiterated that equities should take losses before any bonds in their jurisdictions.

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SECURITIES RIGHTS

BY QAZI AHMAD MASOOD

1. SEBI INTRODUCES A SERIES OF INVESTOR-FRIENDLY POLICIES

SEBI, the market regulator, has simplified the procedures for onboarding Foreign Portfolio Investors (FPIs) in order to enhance the ease of doing business and shorten the time required for their registration. According to a circular issued, the regulator enabled designated depository participants (DDPs) to award FPI registration based on scanned copies of application forms and accompanying documents. Registration on the basis of scanned copies has been permitted, but trade cannot be initiated until the physical documents have been verified, according to the statement.

Applicants must currently deliver scanned copies as well as physical papers of application forms and supporting documentation to DDPs in order to get FPI registration. Furthermore, the Securities and Exchange Board of India (SEBI) has approved the use of digital signatures by FPIs for the execution of registration-related papers by DDPs. Furthermore, the regulator has allowed DDPs to verify PANs using the Common Application Form (CAF) module, which is available on the depositories' websites. Currently, DDPs can only validate the PAN after getting a paper copy from the applicant.

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2. SEBI ISSUES FRAMEWORK FOR ADOPTION OF CLOUD SERVICES

The Securities and Exchange Board of India (SEBI) unveiled a framework for stock exchanges, clearing corporations, and other regulated entities (REs) such as depositories, stock brokers through exchanges, asset management companies (AMCs), and KYC registration agencies to adopt cloud services. (KRAs). The cloud framework was created to ensure basic security standards as well as legal and regulatory compliance for Regulated Entities. (REs). It will be in addition to SEBI's current circulars, guidelines, and advisories.

The primary goal of this framework is to highlight the key risks and mandatory control measures that REs must implement before adopting cloud computing." The paper also specifies the regulatory and legal requirements that REs must meet if they implement such solutions, according to a circular. The approach will be implemented immediately for all new or proposed RE cloud onboarding tasks or initiatives. Cloud computing is the on-demand distribution of IT resources via the Internet for a fee. Rather than purchasing and maintaining computer products and services, one can pay to use a cloud computing service, saving time, effort, and money.

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SECURITIES RIGHTS

3. SUPREME COURT APPROVES A 5,000-CRORE REPAYMENT FROM THE SEBI-SAHARA FUND

After the Supreme Court granted the Centre's request for 5,000 crores from the Sahara-SEBI fund to refund deposits of nearly 10 crore investors in the four Sahara group co-operatives, the Co-operative Ministry stated that the payment process will be completed in 9 months. The highest court's Bench of Justices MR Shah and CT Ravikumar issued the directive in response to a reimbursement application filed by the ministry. The Bench directed the government to release the funds to depositors deceived by the Sahara group of cooperative societies and stated that the entire process will be overseen by retired Supreme Court judge Justice R Subhash Reddy.

Between March 2014 and January 2002, four Sahara group societies – Sahara Credit Cooperative Society Limited, Saharayan Universal Multipurpose Society Limited, Humara India Credit Cooperative Society Limited, and Stars Multipurpose Cooperative Society Limited – were registered under the Multi-State Cooperative Societies Act, 2010, according to the ministry. After receiving several complaints from across the country about the non-payment of deposits to these cooperative societies' depositors, notices were issued to the co-operatives and a hearing was convened before the Central Registrar. The Central Registrar had ordered the cooperatives involved to pay the investors' dues and prevented them from receiving new deposits or renewing current deposits.

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4. SEBI TO SUBMIT A REPORT ON ADANI TO A PANEL FORMED BY THE SUPREME COURT

SAT has set aside an order of market's regulator SEBI barring erstwhile promo The Supreme Court established a six-member expert committee to "investigate whether there was a regulatory failure in dealing with the alleged violation of securities market laws in relation to the Adani Group or other companies" and to submit a report in a sealed cover within two months. It requested that the Securities and Exchange Board of India (SEBI) Chairperson ensure that the committee receives the necessary information.

Separately, the Supreme Court directed the capital market regulator SEBI, which is already investigating allegations against Adani Group companies, to look into: i) whether there was a violation of the minimum public

shareholding norms in public limited companies, ii) whether there was a failure to disclose transactions with related parties, and iii) whether stock prices were manipulated. A three-judge panel led by Chief Justice of India D.Y. Chandrachud directed SEBI to "complete the investigation expeditiously within two months and file a status report." The capital market regulator has also been requested to inform the expert committee of any actions taken in response to the court's orders, as well as any moves made in response to its ongoing inquiry.

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5. SEBI IMPOSES SEVERE DISCLOSURE REQUIREMENTS ON FOREIGN PORTFOLIO INVESTORS

The Securities and Exchange Board of India (SEBI) has imposed strict rules on Foreign Portfolio Investors (FPIs), requiring them to report any major change in their structure and common ownership within seven working days. According to a notification, the SEBI might request any additional papers that may be required for new FPI registrations. According to the new guidelines, FPIs must notify SEBI and the authorized depository in writing within seven working days of any inaccurate or misleading information about a major change in their structure or control.

FPIs must notify an overseas regulator within seven days of any penalty, pending actions, or conclusions of investigations for which action has been taken or is being taken against them. "In the event of any direct or indirect change in the structure, common ownership, or control of the foreign portfolio investor or investor group, it shall bring the same to the attention of its designated depository participant as soon as possible but not later than seven working days," SEBI stated. Depository participants will then report the data to the market's regulator within two days. FPIs were formerly required to notify the authorized depository participant "immediately," which has now been replaced with "as soon as possible but no later than seven working days."

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TAXATION LAW

BY ISHANI CHAROBARTY

1. GST DEPT TO SCRUTINISE I-T, MCA DATA TO IDENTIFY ENTITIES NOT PAYING TAXES

The GST department will soon begin analyzing ITRS filed by businesses and professionals and also MCA filings to ascertain if the entities are adequately discharging their GST liability and widening the taxpayer base. Currently, there are 1.38 crore registered businesses and professionals under the Goods and Services Tax (GST), which was launched on July 1, 2017. Businesses in the manufacturing and services sectors with an annual turnover of more than Rs 40 lakh and Rs 20 lakh, respectively are required to register themselves under the GST and file tax returns.

The data analysis will focus on those entities which are not exempt and are required to register under the GST and file returns, either monthly or quarterly. After identifying the entities which are not complying with the GST law, the GST department will communicate to them at their registered place of business asking them the reasons for non-compliance. The official further said that the data analysis wing will also sift through the quarterly and annual data filed by businesses with the Ministry of Corporate Affairs to find out if any GST evasion is taking place.

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2. NO SERVICE TAX ON ISSUANCE OF CORPORATE GUARANTEE ON BEHALF OF GROUP COMPANIES WITHOUT CONSIDERATION

In a significant case, the Supreme Court has held that the issuance of a corporate guarantee on behalf of group companies without consideration is not a taxable service, and no need to levy service tax. The department has challenged the dropping of proceedings initiated against the assessee, M/s Edelweiss Financial Services Ltd., for having provided a corporate guarantee on behalf of its subsidiaries located within and outside India. The department issued a show cause notice proposing, the recovery of Rs. 97,956,437, consisting of guarantees to overseas companies for which consideration had been received and guarantees provided free of charge to their Indian subsidiaries, for rendering taxable services under Section 65(105) (zm) of the Finance Act, 1994, till June 30, 2012, and services as defined in Section 65B(44) for the period thereafter, until March 15, 2015.

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TAXATION LAW

3. PURCHASER IS NOT ENTITLED TO ITC ON THE PURCHASES MADE FROM THE SELLER WHO HAD DISCHARGED ITS TAX LIABILITY

The Punjab Authority of Advance Ruling (AAR) has held that the purchaser is not entitled to claim. Input Tax Credit (ITC) on the purchases made by it from the seller, who had discharged its tax liability. The bench observed that no registered person shall be entitled to take credit for any input tax in respect of any supply of goods or services or both unless the tax charged in respect of the supply has been actually paid to the government. The assessee runs a furnace at Mandi Gobindgarh and procures ferrous alloys, scrap, gas, and other materials from within the State of Punjab. The assessee receives the material against the GST invoice on which it is entitled to claim the input tax credit on the tax paid on the purchases made by it. The assessee is making the payments through banking channels, and all the transactions are reflected in its books of accounts.

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4. CBDT NOTIFIES E-VERIFICATION SCHEME TO ENCOURAGE VOLUNTARY TAX COMPLIANCE

The Central Board of Direct Taxes (CBDT) has issued a press release introducing the e- Verification Scheme to encourage voluntary tax compliance and facilitate a transparent and non-intrusive tax administration. Using information technology effectively, the scheme aims to share and verify the financial transaction information with the taxpayer, which appears to be either unreported or underreported in the Income Tax Return (ITR) filed by the taxpayer.

The department has been collecting information on financial transactions from multiple sources. Earlier, a part of it was shared with the taxpayer in the 26AS Statement. However, with a view to effectively utilizing the data collected from various sources, the entire information is now displayed to the taxpayer through the Annual Information Statement (AIS). The AIS provides a facility for the taxpayer to object to any information if the Source has misreported any such information. The Department confirms the said information with the source, and if the source states that there is no error, the said information is subjected to risk assessment for e-Verification.

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BY QAZI AHMAD MASOOD

1. REPORT: THE TELECOM DEPARTMENT IS THINKING ABOUT HIRING PRIVATE COMPANIES TO RUN C-DOT

According to those with knowledge of the situation, the Department of Telecommunications (DoT) is considering a proposal to hire private companies to run its Centre for Development of Telematics (C-DOT), which conducts telecom R&D. According to the proposal, the government will own only 49% of C-DOT, with the private sector owning 51% of the company. The plan aims to transform C-DOT into an international center for research and development and an integrator of technological systems. C-DOT, a DoT autonomous center founded in August 1984, conducts research and development for domestic telecom technology design, development, and manufacture.

C-DOT also created the 4G and 5G telecom stack's core software. The institution is also trying to create national firewalls and disaster management programs to boost cybersecurity programs, which will include software intelligence to lessen the effects, among other things. Sources claim that the government plans to create departments like technology transfer and R&D and overhaul C-DOT's whole corporate structure. Additionally, the company will be exempt from government rules regarding the salary structure, the purchase of raw technologies, etc. thanks to the engagement of the private sector. According to insiders, the shareholding arrangement with the private players would be set up to safeguard the interests of the government.

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2. INDIA WILL BECOME A MAJOR EXPORTER OF TELECOM TECHNOLOGY, ACCORDING TO PM MODI'S 6G VISION DOCUMENT

The country's 6G vision plan was launched by Prime Minister Narendra Modi, who claimed that the country's efforts to implement 6G within six months following the deployment of 5G demonstrate its confidence. India, he claimed, is currently making rapid progress towards becoming a significant exporter of telecom technology, having previously only been a consumer.

"Six months after the launch of 5G, we are discussing 6G today. This demonstrates India's confidence. We have made the vision document more prominent today. The introduction of 6G, will serve as a significant foundation, Mr.

Modi added. According to the Department of Telecom's vision paper, 6G technology will deliver ultra-low latency and speeds up to 1 terabit per second, which is 1,000 times faster than the highest speed of 5G. 5G technology offers a speed of 40-1,100 Mbps with the potential to reach a maximum speed of 10,000 Mbps.

The International Telecommunication Union (ITU) Area Office and Innovation Centre, which was established on the campus of the Centre for Development of Telematics (C-DoT), was opened by the prime minister during the occasion. India will provide the entire funding. According to him, the ITU office in India will contribute to creating the ideal conditions for 6G in the nation. Before 4G, India exclusively used telecom technology; however, the country is currently making rapid progress towards being a significant exporter of telecom technology, he claimed. The Prime Minister claimed that internationally renowned companies are showing interest in indigenously developed technology.

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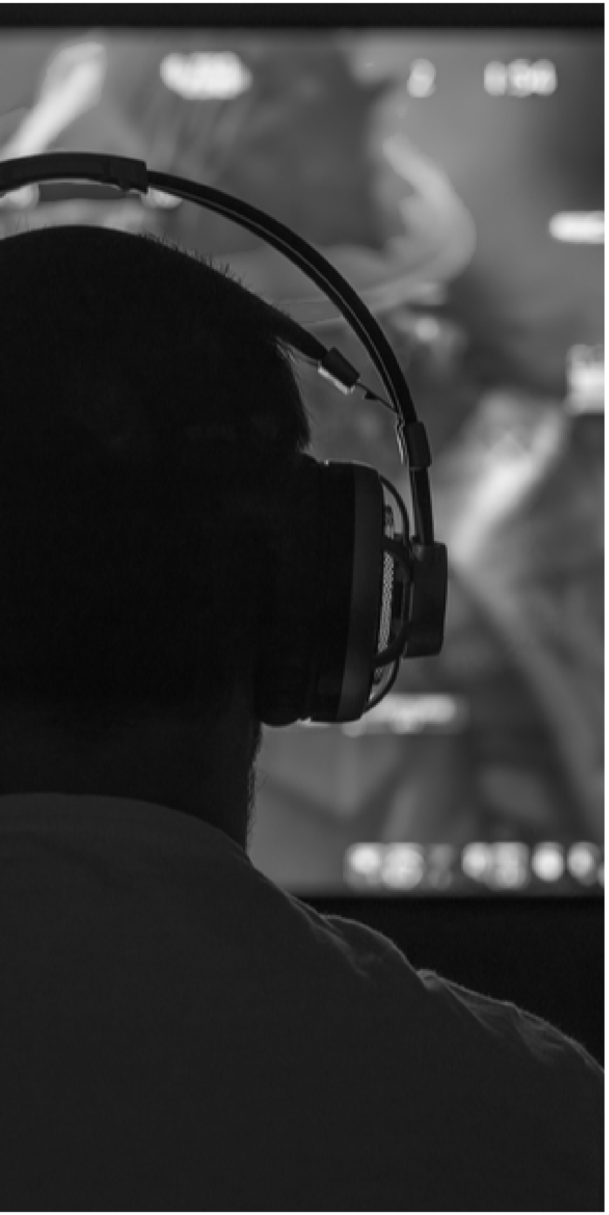
3. CANADA GIVES THE ROGERS-SHAW TELECOM AGREEMENT ITS APPROVAL

The second-largest telecommunications business in the nation will now exist thanks to Canada's final approval of Rogers Communications Inc.'s $15 billion ($20 billion Canadian) acquisition of Shaw Communications Inc. Francois-Philippe Champagne, Minister of Innovation, Science, and Industry, gave the agreement the all-clear after he agreed to certain restrictions regarding the transfer of cellular licenses held by Shaw's Freedom Mobile division to Quebecor Inc. Given the overlap between Rogers and Shaw's cellular businesses, the proposed $2.1 billion ($2.85 billion Canadian) sale of Freedom Mobile to Quebecor-owned Videotron has been essential in resolving antitrust issues with the transaction.

Champagne listed 21 requirements, among them that Videotron offer plans that are at least 20% less expensive than those of rivals and invest $111 million (about $150 million Canadian) over the next two years to update Freedom Mobile's network. Additionally, he imposed a 10-year transfer restriction on Freedom Mobile's license. The Canadian government required Rogers to establish a Western headquarters in Calgary, add 3,000 new jobs in Western Canada, and invest $4 billion ($5.5 billion Canadian) to enhance network services. A breach of the



agreements could result in fines of up to $148 million ($200 million Canadian) for Videotron and $739 million ($1 billion Canadian) for Rogers, according to Champagne, who also announced a moratorium on all significant license transfers in the telecom industry.

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4. INDIA WINS 127+ PATENTS ON 6G, ACCORDING TO ASHWINI VAISHNAW

According to Ashwini Vaishnaw, Minister of Railways and Communications and IT, India has obtained more than 127 patents for 6G from international organizations following the success of 4G and 5G. "A while back, our Prime Minister set a goal for us, saying that the 2G and 3G eras in the telecom business were different; because of these changing times, we should be able to stand shoulder to shoulder in 5G and lead in 6G. Based on this goal, everyone in the nation – from academia to entrepreneurs to innovators – has labored, and the 6G vision was unveiled today. I should also mention that as of right now, our people have acquired about 127 patents for 6G technology, he told reporters.

Even developed nations like the US, he claimed, are interested in acquiring Indian technology. Vaishnaw remarked during a speech at the 17th India Telecom event that India is firmly producing products and technologies while accepting ever-greater obstacles. This ethos is evident in a variety of industries, including renewable energy, steel, and military, where India has ambitious aspirations of producing innovations rather than merely consuming them. That's one significant shift in perspective that's occurred in the last eight years, he remarked.

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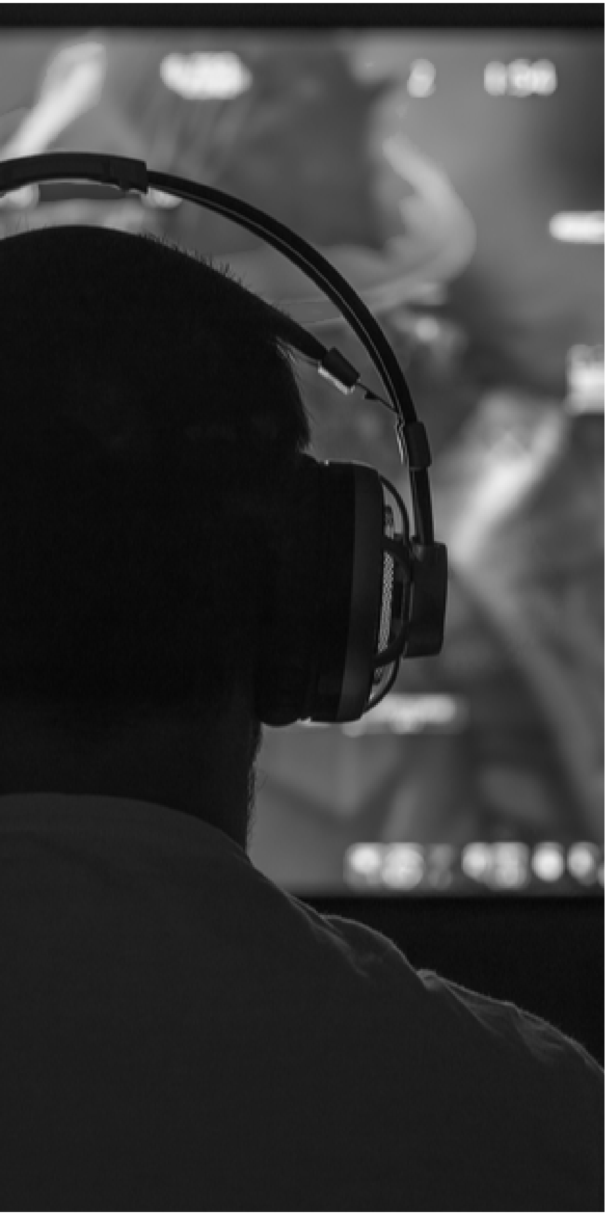
5. ATTORNEY GENERAL INFORMS DOT THAT AUCTIONS CONTINUE TO BE THE PREFERRED METHOD FOR ALLOCATING SPECTRUM

According to reports, Attorney General (AG) R. Venkataramani told the Department of Telecommunications (DoT) that auctions continue to be the best method for allocating spectrum. Prior to drafting guidelines for private networks, DoT had requested the AG's advice on the subject. Among the options offered were direct or administrative allocation or allotment without auction of airwaves to



businesses. According to sources, the AG has declared that any communal resource should always be distributed so as to obtain the highest return possible, and that it is preferable to distribute the resource through an auction procedure.

Even though DoT had already developed rules that made a clear distinction between commercial and non-commercial spectrum, the AG believed that there was still room for debate on the criteria used to analyze or evaluate administrative spectrum allocation. Additionally, DoT has been urged to release stricter administrative assignment standards that should be impenetrable and shield the procedure from legal objections. The agency must return to the AG with the updated policies. The AG will next determine if it is necessary to request more clarification regarding the allocation process from the Supreme Court.

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EVENTS AT RFMLR

FRESHERS' ARTICLE WRITING COMPETITON, 2023

The Editorial Board of RFMLR recently conducted the 3rd Edition of the Freshers' Article Writing Competition, 2023 for the batch of 2027 on the theme "Analysis of the various dimensions of the telecom sector vis-à-vis the Draft Telecommunication Bill, 2022".

The objective of the Competition was to provide newly inducted students a first-hand experience in legal academic writing by giving them a platform to pen down their views on the important legal issues in the field of business and allied laws.

The Competition offered the students a golden opportunity to enhance their research, writing, and drafting skills. We received a very enthusiastic response from the freshers in form of a large number of submissions for the competition. After a rigorous review process, Pranav Aggarwal's "Regulating OTT: An Emerging Tussle" was adjudged as the winning entry.

RFMLR'S WORKSHOP ON DEMYSTIFYING M&A TRANSACTIONS: CROSS-BORDER MERGERS AND ACQUISITIONS: CRITICAL ANALYSIS OF ISSUES AND CHALLENGES

The Editorial Board at RGNUL Financial and Mercantile Law Review (RFMLR) organized the third edition of the "Demystifying Series" on the topic: "Cross-Border Mergers and Acquisitions: Critical Analysis of Issues and Challenges" on March 14, 2023 (Tuesday) with Mr. Pratika Shankar, Managing Associate at Talwar Thakore & associates (TT&A) as the resource person. Mr. Shankar graduated from RGNUL, Punjab in 2013 with exceptional academic laurels and extra-curricular achievements, and has more than 8 years of experience working with national and multinational corporations in the field of Corporate, M&A, and Private Equity.

The workshop was moderated by Ms. Shivi, Copy-editor Editor at RFMLR. The workshop provided a comprehensive insight into Cross-border Mergers & Acquisitions (M&A), which are riddled with a number of complexities, regulations, and ensuing legal issues. The investors are required to comply with a multitude of laws and regulations, which ranges from who an investor can be, to which industry, and the percentage of shareholding which will be awarded post-merger. It also delved into the nuances involved in such multifaceted transactions through a discussion of some practical scenarios.

The session commenced with a basic explanation of the terms; cross-border, mergers and acquisitions, and the related nuances with practical illustrations. Subsequently, the challenges, implications, and considerations of cross-border Mergers and Acquisitions from a legal perspective were discussed. A detailed overview of the sector-specific challenges was discussed and consequently the jurisdictional challenges. Further, in order to enhance the practical understanding of the participants of the session, they were required to complete an assessment test consisting of various practical scenario-based multiple-choice questions (MCQs). Throughout the session, Mr. Shankar also addressed the numerous queries raised by the participants. The workshop gave academics, practitioners, and students a special chance to acquire hands-on knowledge and benefit from the valuable perspectives shared by Mr. Shankar.

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