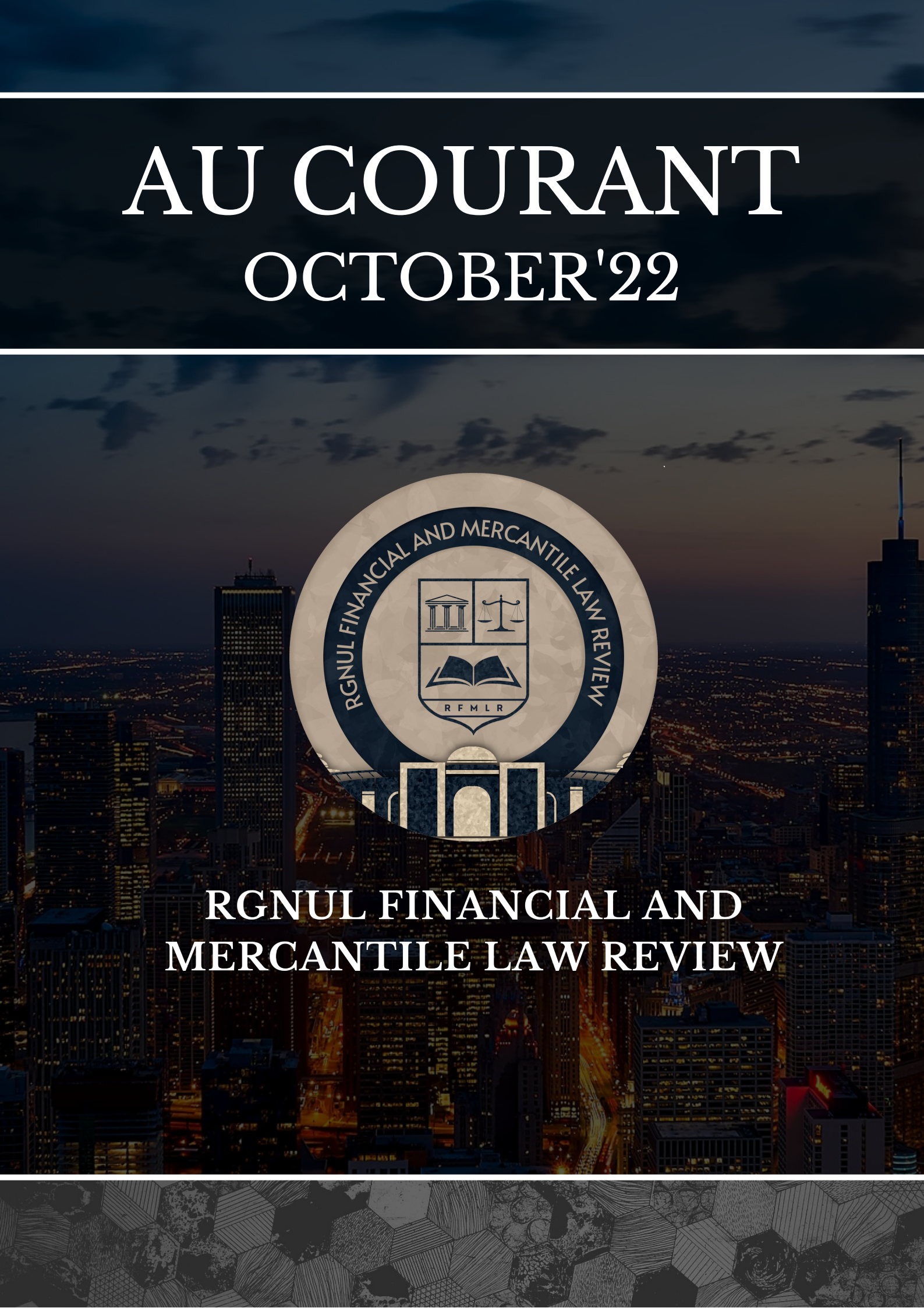
AU COURANT
OCTOBER'22



RGNUL FINANCIAL AND MERCANTILE LAW REVIEW

IN THIS ISSUE

PREFACE

It gives us immense joy to share with our readers, the October 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 decision of the CCI to impose $936 penalty on Google, the landmark judgement of Somesh Choudhary v Knight Riders Sports Private Limited & Anr., and RBI's decision to allow Asset Reconstruction Companies to be Resolution Applicants under the IBC, along with a short synopsis of the recently introduced Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Amendment Rules, 2022.

Major happenings in various fields of law such as alternate dispute resolution, banking and finance, competition law, insolvency, international trade law, intellectual property 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.

Further, the 'Editorial Column' section contains a piece by Ms. Vanshika Samir (Associate Editor, RFMLR) and Mr. Dhiren Gupta (Assistant Editor, RFMLR) titled Spectrum Management and Over-The-Top Media Apps In India- vis-à-vis The Draft Telecommunication Bill, 2022.

Lastly, the section 'Call for Comments' encourages readers to express their views and concerns on the measures under development and provide critical suggestions on issues that may have a bearing on financial and mercantile laws. In this Edition, the Call for Comments invited by the Reserve Bank of India on the Master Direction on Information Technology Governance, Risk, Controls and Assurance Practices, to be Implemented by the Regulated Entities is discussed.

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

HIGHLIGHTS

COMPETITION COMMISSION OF INDIA IMPOSES ₹936 CRORE PENALTY ON GOOGLE

The Competition Commission of India (CCI) in its order dated 4th April 2022 launched a probe into Zomato and Swiggy for prima facie violation of Sections 3(1) and 3(4) of the Competition Act, 2002. The sections deal with Anti-Competitive Agreements which have an Appreciable Adverse Effect on Competition (AAEC) in India. The probe has been launched upon information provided by the National Restaurant Association of India (NRAI).

First of all, the NRAI averred that the degree of market power required for analysis under Section 3(4) is lower than that required under Section 4 of the Act which deals with abuse of dominant position. A party (although not declared dominant) with sufficient market power can cause AAEC by entering into anti-competitive vertical agreements. NRAI claimed that Zomato's market share is close to 52% in terms of gross order volume and that of Swiggy's is 43 % (pan-India basis) which enables them to cause AAEC in the market through their anti-competitive and restrictive vertical agreements with the Restaurant Partners (RPs).

NRAI then alleged that Swiggy and Zomato were indulging in deep discounting, data masking, exorbitant commissions, and imposing price parity terms on RPs. Further, owing to their huge market share, the companies are able to impose one-sided and unfair agreements with the RPs. The Association also said that the two food delivery apps are engaging in a dual role on their platform where they list their own cloud kitchen brands exclusively on their platform, akin to private labels, thereby creating an inherent conflict of interest in the platform's role as an intermediary on one hand and as a participant on the other hand. Moreover, Zomato and Swiggy often induce RPs to commit exclusively to the respective platform.

NRAI also submitted that the market has seen a consolidation to the point where it consists of only two major online food platforms that do not face competitive pressures from other players and/or the RPs. Further, there has not been any effective credible entry into the market in the last three years and other players have been absorbed either by Zomato or Swiggy, demonstrating significant entry barriers.

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Further, NRAI also detailed the funds raised by Zomato and Swiggy for their operations in India and stated that the access to funding that these platforms have, also acts as an entry barrier.

Upon hearing the submissions made by the association and the companies, the CCI was of the view that there exists a prima facie case with respect to some of the conduct of Zomato and Swiggy, which requires an investigation by the Director-General (DG), to determine whether their conduct has resulted in contravention of the provisions of Section 3(1) of the Competition Act, 2002 read with Section 3(4).The DG has been directed to carry out a detailed investigation and submit a report within 60 days from the date of the order. Read more

By- Raghav Sehgal (Copy Editor)

HIGHLIGHTS

CENTRE INTRODUCES THE INFORMATION TECHNOLOGY (INTERMEDIARY GUIDELINES AND DIGITAL MEDIA ETHICS CODE) AMENDMENT RULES, 2022

The Indian government announced changes to its Information Technology (IT) rules that will apply to social media companies, in what is likely to be interpreted as a restraining of big tech firms. The amended rules, which went into effect on October 28, would create a government panel to hear user complaints about social media platforms' content moderation decisions. The Centre notified the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Amendment Rules, 2022, on October 28, making it mandatory for social media platforms such as Twitter, Facebook, YouTube, and Instagram, among others, to adhere to the provisions of the Indian Constitution.

The IT rules changes have been in the works for months, though, ever since users red-flagged instances of digital platforms acting arbitrarily. The revised IT rules also pave the way for the formation of grievance appellate panels, which will resolve any complaints users may have about how social media platforms initially handled their complaints about content and other issues. According to the revised regulations, the corporations must respond to user complaints within 15 days or, in the case of an information deletion request, within 72 hours of receiving them.

Ashwini Vaishnaw, the telecom minister, tweeted: "Users are being empowered. The Grievance Appellate Committee was established to hear appeals against the decisions of the Grievance Officer appointed by the intermediary." He also stated that the intermediaries' privacy policies and user agreements will be readily accessible in the eight Schedule Indian languages. The government proposed creating a government panel and published draught amendments to the IT law in June that would force businesses to "respect the rights provided to the citizens under the constitution of India."

The Indian government is worried that users who disagree with decisions to remove their content would not have an appropriate method to challenge those decisions and will instead have to resort to going to court. The government had stated in June that "a number of (technology) intermediaries had operated in breach of constitutional rights of Indian citizens," without mentioning any particular business or rights. Union telecom minister of state Rajeev Chandrasekhar said the new IT rules are the "next step to realizing our govt's duty to Digital Nagriks of Open, Safe & Trusted, Accountable Internet ... It also marks a new partnership between the government and intermediaries in making and keeping our Internet safe."

HIGHLIGHTS

The 'Grievance Appellate Committees' will be set up within three months, according to a gazette notification. A chairperson and two full-time members, including two independent members, will make up the government panel. Read More

-By ***Qazi Ahmad Masood (Assistant Editor)***

HIGHLIGHTS

RBI ALLOWS ASSET RECONSTRUCTION COMPANIES TO BE RESOLUTION APPLICANT UNDER INSOLVENCY AND BANKRUPTCY CODE, 2016

In a major change of policy, the Reserve Bank of India (RBI) has allowed Asset Reconstruction Companies (ARCs) to be a Resolution Applicant (RA) under the Insolvency and Bankruptcy Code, 2016 (IBC). The RBI released a new regulatory framework for ARCs on October 11, 2022. ARCs have now been allowed to carry out activities as RA in accordance with the Code under the amended structure. The Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act (SARFAESI Act) does not clearly address this duty, hence the RBI was required to get particular authorisation under Section 10 of the Act.

It should be emphasised that Chapter III of the SARFAESI Act regulates the process of creating, regulating, and running ARCs. The actions that an ARC may take in order to rebuild an account's assets are outlined in Section 9 of the Act. These actions resemble resolution plans under the IBC in many ways. However, there was significant concern raised over the problem of ARCs acting as RA in the resolution plan under the IBC. Now that this matter has been clarified, ARC participation in the Corporate Insolvency Resolution Process under the IBC is now possible.

However, there are restrictions and constraints since ARCs with a minimum Net Owned Fund (NOF) of INR 1,000 crore are qualified to serve as RAs. Additionally, ARC will require a Board-approved policy with a sectoral exposure internal limit for this purpose. The involvement of ARC will be case-by-case and subject to the approval of an internal committee that will be mostly made up of independent directors. After five years from the date the resolution plan was approved, ARC will be required to reduce its influence in such concluded cases. If there is a violation, ARCs will not be permitted to submit any new resolution plans, either as a resolution applicant (RA) or as a resolution co-applicant.

The ARC will also have to abide by the associated disclosures requirements with regard to assets acquired under IBC, kind, and value of assets acquired, sector-wise distribution based on corporate debtor's business, and status of resolution plans' execution in their financial statements.

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This change is anticipated to provide the resolution ecosystem the much-needed boost it needs as the ecosystem was seeing dwindling competitiveness as big ARCs avoided direct engagement in the resolution plans due to a lack of clarity from RBI. Additionally, this will also aid in the settlement of matters that are now pending before the NCLT or courts due to a lack of clarity. The resolution situation should get a stronger reaction in terms of resolution strategies with the arrival of large ARCs into the field. However a lot will depend upon the completed rules of each ARC, particularly their own regulations regarding the sector and sectoral exposure limit. Read More

By ***Tarpan Son (Junior Editor)***

HIGHLIGHTS

CLAIMS ARISING FROM THE GRANT OF AN EXCLUSIVE RIGHT AND LICENSE TO USE INTELLECTUAL PROPERTY RIGHTS CONSTITUTE AN 'OPERATIONAL DEBT' UNDER THE IBC

In the recent decision, the National Company Law Appellate Tribunal ("NCLAT"), New Delhi in the case of Somesh Choudhary v Knight Riders Sports Private Limited & Anr. has held that claims arising from the grant of an exclusive right and license to use intellectual property rights falls within the definition of "operational debt" under Section 5(21) of Insolvency and Bankruptcy Code, 2016 ("IBC").

Global Fragrances Pvt Ltd ("Corporate Debtor") had entered into a licensing agreement with Knight Riders Sports Private Limited ("Respondent") whereby the Respondent had granted exclusive rights and allowance to the Corporate Debtor to use the trademark 'KKR', to manufacture, distribute and advertise licensed products including deodorants, hair gels, and perfumes (collectively the "Licensed Products"). In return, the Corporate Debtor was obligated to pay Minimum Guaranteed Royalties ("MGR") as identified in the licensing agreement as compensation for enjoying the exclusive rights.

The Respondent had raised invoices for an aggregate sum of INR 40,60,147 towards the outstanding MGR payable by the Corporate Debtor and only part payment was received. On failure of the Corporate Debtor to pay the balance MGR, the Respondent filed an application for initiation of the corporate insolvency resolution process under Section 9 of the Code. The application was admitted by the National Company Law Tribunal, New Delhi and aggrieved by the same, Mr Somesh Choudhary (a shareholder of the Corporate Debtor) filed this appeal.

To determine whether non–payment of the MGR would constitute an operational debt, the NCLAT looked into the definition of "goods" under the Sale of Goods Act, 1930 wherein the term "goods" included all moveable property other than actionable claims and money. The NCLAT relied on the decision of the Hon'ble Supreme Court in Vikas Sales Corporation v. Commissioner of Sales Tax and held that trademarks and copyrights would constitute moveable property and accordingly would be considered as "goods" under the Sale of Goods Act, 1930.

HIGHLIGHTS

TThe NCLAT examined the term "MGR" and observed that a guaranteed minimum royalty is a periodic payment made by a licensee towards a licensor to utilise a licensed product for an agreed period. Further, the NCLAT observed that pursuant to Section 7 of the Central Goods and Service Act 2017, any utilisation or enjoyment of intellectual property rights would be considered a service provided by the intellectual property rights holder. Accordingly, the NCLAT referred to the decision of the Madras High Court in the matter of AGS Entertainment Private Limited v. Union of India4 and held, that by providing the Corporate Debtor with a right to utilise the trademark of 'KKR' in its Licensed Products, the Respondent had temporarily provided permission to use its trademark, which would constitute the provision of a service by the Respondent. Consequently, the outstanding MGR payable in connection with the provision of such service would constitute an operational debt under section 5(21) of the Code.
Further, the NCLAT set aside the contention of the Corporate Debtor on the premise that, as per the Ravindranath Reddy Judgement, there was no direct nexus established between the MGR payable and the business operations of the Corporate Debtor. The NCLAT referred to the decision by its larger bench in Jaipur Trades Expocentre Private Limited v. M/s. Metro Jet Airways Training Private Limited5 , and stated the Ravindranath Reddy Judgement had been overturned as it did not correctly deal with the meaning of "service" under section 5(21) of the Code.

The NCLAT examined the licensing agreement between the Corporate Debtor and the Respondent and held that the trademark 'KKR' was used in the development, packaging and advertisement of the Licensed Products. This established a direct nexus between the payment of the MGR and the business operations of the Corporate Debtor. Accordingly, such MGR dues constituted an operational debt under the Code. **Read More**

By *Shashwat Sharma (Junior Editor)*

NEWS UPDATES

ALTERNATIVE DISPUTE RESOLUTION

1. PLACE OF ARBITRATION WOULD NOT BECOME THE 'SEAT' WHEN THE EXCLUSIVE JURISDICTION IS CONFERRED ON A COURT AT A DIFFERENT PLACE: DELHI HIGH COURT

In Kush Raj Bhatia v. DLF Power and Services Limited, The High Court of Delhi held that place of arbitration would not become the seat of arbitration when the parties have conferred exclusive jurisdiction on a Court other than the seat Court. The bench held that conferring exclusive jurisdiction, over a Court different from the Court at the place of arbitration, would be a contrary indicia and the place of arbitration would merely be the venue and only the Court at which exclusive jurisdiction is conferred shall have the jurisdiction to decide all applications arising out of the arbitration between the parties. The Court referred to judgments of the Supreme Court and various High Courts to hold that mere expression 'place of arbitration' cannot be the basis to determine the intention of the parties that they have intended that place as the "Seat of Arbitration". It held that intention of the parties to designate a place as seat of arbitration is to be determined on the basis of other relevant clauses. The Court referred to the judgment of the Supreme Court in Roger Shashoua v. Mukesh Sharma to hold that a place would be deemed to be the seat of arbitration unless there is any contrary indication or Contrary Indicia. **Read More**

2. DELHI HIGH COURT DELINEATES CIRCUMSTANCES TO INVOKE "GROUP OF COMPANIES" DOCTRINE

In Esha Kedia versus Milan R. Parekh & Ors., The Delhi High Court has ruled that the plea that signatures to the MoU containing an arbitration clause were obtained by threat and coercion, cannot be considered while considering an application under Section 11 of the Arbitration and Conciliation Act, 1996 (A&C Act) for appointment of the Arbitrator. The Bench held that each Company is a separate legal entity which has separate legal rights and liabilities and hence, an agreement entered into by one of the Companies in a group, cannot be binding on the other members of the same group. However, the Court added that in certain exceptional circumstances, by invoking the concept of "Group of Companies", an arbitration agreement can be binding on the non-signatory Companies or a third party. **Read More**

3. ARBITRATION - COURT CAN UNDERTAKE PRELIMINARY INQUIRY UNDER SECTION 11 TO ASCERTAIN IF DISPUTE IS ARBITRABLE : SUPREME COURT

Emaar India Ltd. Vs. Tarun Aggarwal Projects LLP, The Supreme Court has held that the High Courts while appointing the arbitrator can launch a preliminary inquiry to decide the issue of 'Excepted Matters' when an objection to that effect is taken by the respondent. The bench that if any dispute falls within the 'excepted' category provided in the contract between the parties, then it falls outside the scope of arbitration, therefore, no arbitration can happen apropos those matters. The Court held that an arbitration agreement is to be strictly construed and the intention of the parties to put certain disputes outside the arbitration clause must be given effect to. Further, it held that a party cannot claim more than what is covered by the terms of the agreement and it is not permissible for the Court to make a new contract, however reasonable, if the parties have not made it themselves. Next, the Court answered the issue as to who decides the issue of non-arbitrability. The Court relied on its judgment in Vidya Drolia Vs. Durga Trading Corporation and Indian Oil Corporation Limited vs NCC Limited hold that the High Courts while appointing the arbitrator can launch a preliminary inquiry to decide the issue of 'Excepted Matters' when an objection to that effect is taken by the respondent. **Read More**

4. MEMBERS OF JOINT VENTURE CANNOT INVOKE ARBITRATION CLAUSE IN THEIR INDIVIDUAL CAPACITY: DELHI HIGH COURT

In Consulting Engineers Group Limited versus National Highways Authority of India (NHAI), The Delhi High Court has ruled that where an agreement is entered into by the parties by forming a consortium / Joint Venture, one of the members of the consortium cannot separately invoke the arbitration agreement in their individual capacity. The Bench reiterated that when there is an agreement with a consortium, it is never the intention of the parties that one of the members of the consortium can separately invoke the arbitration clause.

A notice inviting tender was issued by the respondent- National Highways Authority of India (NHAI), for providing consultancy services. To participate in the tender process, the petitioner- Consulting Engineers Group Limited, formed a joint venture with M/s Aecom Asia Company Ltd. An MoU was entered into between the parties, where M/s Aecom was specified as the lead partner and the petitioner as the associate partner.

"Thus, in view of the aforesaid it is seen that only the consultants, i.e., M/s Aecom in association with the petitioner can invoke the disputes resolution clause. It is the consultants and not the petitioner in his individual capacity who are referred to as "parties" in the arbitration agreement as contained in the Consultancy Agreement. Petitioner not being a party to the arbitration agreement in its individual capacity, cannot take recourse to the arbitration clause in its individual capacity, or approach this Court in individual capacity", the Court said. **Read More**

5. NOTICE STATING RIGHT TO INITIATE ARBITRATION NOT A NOTICE UNDER SECTION 21 OF A&C ACT: DELHI HIGH COURT

In Shriram Transport Finance Co. Ltd. versus Narender Singh, The Delhi High Court has ruled that a notice issued by a party, merely stating its right to initiate arbitral proceedings, which it would subsequently initiate if the payment was not made by the opposite party, is a unilateral communication which does not qualify as a notice under Section 21 of the Arbitration and Conciliation Act, 1996 (A&C Act). The Court, perusing the letter issued by the appellant company to the respondent, observed that the appellant had merely stated that it had the right to initiate arbitration proceedings and if the payment was not made by respondent, it would initiate arbitral proceedings. Further, it noted that the said letter did not name any person as an arbitrator nor the procedure being followed for the appointment of the arbitrator.

The Bench reiterated that the A&C Act does not contemplate unilateral appointment of an arbitrator by one of the parties and that there must be a consensus between the parties for appointment of the arbitrator. The Court added that commencement of arbitral proceedings is incumbent on the receipt of such request or notice, as provided under Section 21 of the A&C Act. Read More

By Dhiren Gupta (Assistant Editor)

NEWS UPDATES

BANKING AND FINANCE

1. NOBEL PRIZE IN ECONOMICS TO BEN BERNANKE SPARKS DEBATE

A day after the Royal Swedish Academy of Sciences awarded this year's Nobel prize in economics to former US Federal Reserve Chairman Ben Bernanke, a debate over him getting the award resurrected over his handling of the 2008 financial crisis. The BBC quoted that Bernanke's research showed how bank runs had prolonged the Great Depression in the 1930s, which the former Fed chair later applied some of those lessons during his time at the US Federal Reserve, which he led from 2006-2014. **Read More**

2. PM MODI LAUNCHES 75 DIGITAL BANKING UNITS ACROSS 75 DISTRICTS

Prime Minister Narendra Modi launched 75 Digital Banking Units (DBUs) in 75 districts with an objective to promote financial inclusion. The ceremony was attended by union finance minister Nirmala Sitharaman and Reserve Bank of India (RBI) governor Shaktikanta Das via virtual mode. The setting up of 75 DBUs in 75 districts of the country was done to commemorate the 75 years of independence of the country. Eleven public sector banks, 12 private sector banks and one small finance bank are participating in the endeavor. They will spread Digital Financial Literacy and special emphasis will be given to customer education on cyber security awareness and safeguards. **Read More**

3. GOVERNMENT SEEKS RS. 640 BILLION VALUE FOR IDBI BANK IN STAKE SALE

The IDBI Bank stake sale is a test case for Prime Minister Narendra Modi, who has committed to divest from most large businesses India owns, and use the funds to bolster public finances. After years of trying, the government has only been able to privatize national carrier Air India Ltd. and introduce outside backers to LIC, while its plans to sell refiner Bharat Petroleum Corp Ltd. hit a wall as bidders struggled to find partners. India is pushing for a valuation of around 640 billion rupees ($7.7 billion) for state-owned IDBI Bank Ltd. in what could be the biggest sale of the government's stake in a lender in decades, according to a person familiar with the matter. **Read More**

4. SBI SLASHES SAVINGS BANK DEPOSIT RATE BY 5 BASIS POINTS

The country's largest lender State Bank of India has slashed interest rate on savings bank deposits by 5 basis points to 2.70 per cent. The revised rate is applicable for balances less than Rs 10 crore, according to the bank's website. This cut in savings bank deposits rate by SBI comes at a time when other lenders are raising rates on term deposits. For balances of Rs 10 crore and above, SBI has raised the savings bank deposits rate by 5 bps to 3 per cent from 2.75 per cent. The new rates are applicable from October 15, the bank said. Read More

By Ishani Chakraborty (Assistant Editor)

NEWS UPDATES
COMPETITION LAW

1. ANTI-COMPETITIVE CONDUCT CCI SLAPS ₹392-CRORE PENALTY ON MAKEMYTRIP-GOIBIBO, OYO

The Competition Commission of India (CCI) has slapped a fine of Rs. 392 Crore on online travel aggregators (OTAs) MakeMyTrip (MMT), Goibibo, and OYO for their alleged unfair business practices. While a fine of INR 223.48 Cr was slapped on Make My Trip-Goibibo (both companies completed their merger in 2017, but operate individually), the competition watchdog imposed a fine of INR 168.88 Cr on OYO. "MMT-Go is directed to provide access to its platform on a fair, transparent and non-discriminatory basis to the hotels/chain hotels, by formulating the platforms' listing terms and conditions in an objective manner," the CCI said in an order.

Apart from the fine, the competition watchdog directed MMT-Goibibo to 'suitably modify' its agreements with partner hotels. It also directed the OTA to remove all allied price parity obligations on hotels with respect to other aggregators. Additionally, the Gurugram-based travel aggregator was also directed to nullify all exclusivity-based contracts with its partner hotels. The CCI ruling also noted that MMT accorded preferential treatment to OYO on its platform, causing denial of market access to other players. The findings were part of a nearly three-year long detailed investigation into the matter, which was launched in 2019. **Read More**

2. SPAIN ISSUES RARE FINE UNDER COMPETITION RULES FOR CONSUMER DECEPTION

Spanish renewable power and gas supplier Audax Renovables SA (and its retail subsidiaries have been slapped with a fine totalling EUR 9.26 million (USD 9.03m) for using fraud to acquire household customers from rivals, Spain's competition regulator CNMC said on Monday. The subsidiaries were accused of making contact with consumers by posing as their regular power and gas provider, and using various tactics to deceive households into switching to retailers of the Audax group, according to CNMC.

CNMC said that its investigation found that the group's misconduct had affected thousands of consumers, including vulnerable ones, and significantly changed the behaviour of the demand in the residential power and gas market. **Read More**

3. TURKISH COMPETITION BOARD FINES META PLATFORMS $18.6 MILLION

Turkey's competition authority has fined Facebook-parent Meta Platforms Inc. 346.72 million lira ($18.63 million) for breaking competition law. The company held a dominant position in personal social networking services and online video advertising markets and obstructed competitors by merging data collected through its core services Facebook, Instagram and WhatsApp, the Turkish authority said in a statement.

Turkey's competition authority said Meta must act to reinstate competition in these markets and prepare annual reports about the steps it will take for the next five years. It said the fine was based on the company's 2021 income. In 2021, the competition authority launched an investigation into WhatsApp, and then Facebook Inc., after the messaging app asked users to agree to let Facebook collect user data such as phone numbers and locations, a change that was rolled out globally. Social media companies have been a point of attention in Turkey, which adopted a law last week that would jail journalists and social media users for up to three years for spreading "disinformation." **Read More**

4. SPAIN FINES MERCK $38 MILLION FOR ANTICOMPETITIVE PRACTICES

Spain's competition watchdog, The National Commission on Markets and Competition (CNMC) has slapped a 39 million-euro ($38.45 million) fine on U.S.-based Merck & Co Inc for anti-competitive behaviour in a case brought by Spanish rival Insud Pharma over a contraception device. The CNMC antitrust agency said in a statement on Tuesday Merck's local unit, which had a monopoly on vaginal contraceptive rings in Spain between 2002 and 2018 with its Nuvaring device, prevented Insud Pharma in 2017 from marketing its own device through deceptive practices.

Merck Sharp & Dohme (MSD), the official name of Merck & Co outside the United States and Canada obtained a court order barring Insud Pharma from manufacturing the devices in Spain, where it has all its operations, hence preventing sales all over the world, the CNMC said. MSD deployed a strategy of deception with the court, hiding relevant factual and technical information, it was framed as a very serious infringement that constituted an abuse of dominant position. **Read More**

5. CCI ISSUES CEASE AND DESIST ORDER AGAINST KRAFT PAPER MANUFACTURERS AND THEIR FOUR ASSOCIATIONS FOR INDULGING IN ANTI-COMPETITIVE PRACTICES

The Competition Commission of India (CCI) issued a final order on 12/10/2022 against four regional associations of Kraft Paper manufacturers, including their 115 members which were found to have contravened the provisions of Section 3(3) read with Section 3(1) of the Competition Act, 2002 (the 'Act'), which proscribe anti-competitive agreements. The case was initiated on the basis of information filed by three federations/associations of corrugated box manufacturers. It was alleged that the various associations of Kraft Paper Manufacturers, by way of periodic meetings and correspondences, direct their members (i.e., Kraft Paper Mills) to: (i) increase the price of the paper to be sold to the buyers, i.e., corrugated box manufacturers; and (ii) create a condition of shortage to enforce the unjust price increase and shut the operation of the paper mills in a region collectively.

Keeping in mind the peculiar facts and circumstances of the case including the fact that the many of the Kraft Paper Manufacturers were MSMEs and were going through economic and financial crisis as a fallout of COVID-19 pandemic, the CCI refrained from imposing any monetary penalty upon the infringing associations and Kraft Paper Manufacturers. Further, several Kraft Paper Manufacturers also admitted their wrongdoings and adopted a cooperative and non-adversarial approach. Read More

By Dhiren Gupta (Assistant Editor)

NEWS UPDATES
INSOLVENCY LAW

1. DECREE OF CIVIL COURT WILL NOT ALTER THE BASIC NATURE OF TRANSACTION: NCLT DELHI

The principal bench of the National Company Law Tribunal (NCLT) while adjudicating an application filed in M/s Jones Lang Lasalle Building Operations Pvt. Ltd. v M/s Celebration City Projects Pvt. Ltd has held that the decree of civil court will not alter the basic nature of transaction. In order to adjudge the claim, the transaction must be taken into account.

The Applicant had filed an application before the Adjudicating Authority seeking recognition of her status as a Financial Creditor of the corporate debtor in class of allottees. The applicant contended that issue of decree should not stand in the way of resolution professional admitting the claim of real estate allottee in a class. The bench while pronouncing the order relied on the NCLAT judgement in Mukul Aggarwal v. Royale Resinex Pvt. Ltd. Based on the judgement, the court held that the Applicant should be treated as the real estate allottee in class and be dealt accordingly. Read More

2. INDEMNITY OF OBLIGATIONS UNDER AN AGREEMENT IS NOT A 'FINANCIAL DEBT' UNDER IBC: NCLT MUMBAI

NCLT Mumbai while adjudicating an appeal filed in Reserve Bank of India v Reliance Capital Limited has held that indemnity of the obligations under the Agreement is not a 'financial debt' under Section 5(8) of Insolvency and Bankruptcy code, 2016 (IBC).

In the present case, the Applicant had issued a legal notice to the Corporate Debtor (CD) for payment of an amount of 120cr pursuant to their obligation under the Obligor Undertaking. As the Corporate Insolvency Resolution Process (CIRP) commenced, the Applicant filed Form C submitting its claim as a Financial Creditor of CD. The claim was rejected by the administrator. The Applicant thereafter filed an application seeking admission of its claim in the capacity of Financial Creditor of CD. The bench held that obligations under the undertaking do not attract the definition of 'financial debt'. Read More

3. ON APPROVAL OF PLAN BY MSME DIRECTORS, THEY WILL BE TREATED AS NEW OWNERS: NCLT MUMBAI

NLCT Mumbai while adjudicating a petition filed in Aries Agro Pvt. Ltd. v ETCO Industries Pvt. Ltd., has held that once the resolution plan submitted by MSME CD's promoters/directors is approved by the Adjudicating Authority, the ownership of the CD shall be considered as fresh, even if the directors/promoters remain the same.

The Successful Resolution Applicant (SRA) had filed an application against the concerned bank (Union Bank of India) before the Adjudicating Authority seeking directions to allow operations in current account and to change the asset classification of the accounts to "Standard". The SRA contended that if "Standard" status is not given then this would cause hindrance in resolution process. The Bank argued that an account cannot be upgraded to 'standard' until the full settlement amount is discharged. The Bench opined that as per RBI norms the account can be upgraded as standard after the change in ownership is implemented. The Bench, therefore, directed the Bank to allow all normal operations in current account of Corporate Debtor and to change the asset classification of its accounts to "Standard". Read More

4. NO NOTICE IS REQUIRED FOR PERSONAL GUARANTOR AT THE STAGE OF APPOINTMENT OF IRP: NCLT AMRAVATI

NLCT Amravati while adjudicating a petition filed in Central Bank of India v Mr. Kothapatti Raju, has held that in terms of Section 97 and Section 100 of IBC, no notice or right of audience can be given to the Personal Guarantor at a stage before appointing the Interim Resolution Professional (IRP).

The Financial Creditor had issued a recall letter requesting the Corporate Debtor to clear the entire due amount. The Financial Creditor thereby filed an application under section 95 of the Insolvency and Bankruptcy Code, 2016 (IBC), seeking to initiate Resolution Process against the Personal Guarantor of the CD. Notice was issued to the Personal Guarantor but he did not enter appearance. The bench observed that even if the Personal Guarantor had appeared, no right of audience is available to him under Section 95 or Section 97 of IBC. Accordingly, the Bench admitted the application under Section 95 of IBC and initiated insolvency resolution process against the Personal Guarantor. Read More

5. NCLAT DELHI RESTORES PNB'S ORIGINAL CLAIM, IN JET AIRWAYS CIRP

The principal bench of NCLAT while adjudicating an appeal filed in Punjab National Bank v Mr. Ashish Chhawchharia & Ors has has held that the Resolution Professional had incorrectly reduced the Punjab National Bank's admitted claim of Rs. 956 Crores to Rs. 752 Crores.

This comes after the bank moved the NCLAT last year against the approval of bids for the defunct airline Jet Airways. The bank challenged the approval of the Resolution Plan by Kalrock-Jalan Consortium on June 22, 2021, by the Mumbai bench of the NCLT. The bank was aggrieved by the reduction in its claim amount by around Rs 202 crore by the Resolution Professional, which according to it, is in complete violation of the processes as enumerated under the IBC. PNB is the largest shareholder in Jet Airways with a 26 percent stake which it secured after the invocation of a pledge in 2019. Read more

By Arnav Mahajan (Assistant Editor)

NEWS UPDATES

INTELLECTUAL PROPERTY RIGHTS

1. KARNATAKA HC DECLINES RELIEF TO XIAOMI INDIA IN ₹5,551 CR ASSET SEIZURE CASE

The Karnataka High Court declined to grant interim relief to the company in the ₹5,551 crore Foreign Exchange Management Act (FEMA) case. The court also told the Chinese smartphone maker to provide a bank guarantee worth ₹5,551 crores in assets that are frozen. The Chinese smartphone manufacturer said that it has halted operations effectively while terming the actions taken by the ED as "severely disproportionate." It also argued that a bank guarantee of its assets would mean submitting the entire amount, which will hinder in paying salaries to its employees in India. **Read More**

2. APPLE, HTC, AND ZTE WIN IN US PATENT INFRINGEMENT CASE

The U.S. Court of Appeals for the Federal Circuit affirmed a win for Apple Inc, HTC Corp, and ZTE Corp against allegations that imports of their devices infringe wireless-technology patents. The companies' smartphones, smart watches, tablets, and other LTE-capable devices do not violate INVT SPE LLC's rights in two patents originally owned by Panasonic, the Court said. NVT filed a complaint against Apple, HTC, and ZTE at the U.S. International Trade Commission in 2018, accusing their devices that comply with the LTE wireless standard of infringing its patents, and sought a ban on imports of the allegedly infringing devices. The commission ruled for the device makers in 2020. **Read More**

3. HOTEL BANNED FROM USING 'KOCHANNAN' TAG CITING TRADEMARK VIOLATION

In an important verdict related to intellectual property right by relatively small trademark units, the additional district court has passed an injunction order barring a Poojappura-based hotel from using the brand name 'Kochannan's hotel', stating that the name Kochannan's Hotel was an infringement of the registered trademark of the petitioner. on the basis of a complaint filed by the original brand owner Safeer P, who runs the famous

"Kochannan Sahib's Hotel and Restaurant" at Karamana. Mr. Safeer's counsel Bindu Sankarapillai said the order underlined the relevance of trademark registration for small businesses. **Read More**

4. BOMBAY HIGH COURT GRANTS AD-INTERIM RELIEF TO PIDILITE IN TRADEMARK INFRINGEMENT SUIT

The Bombay High Court recently granted ad-interim relief to Pidilite Industries Ltd., manufacturer of adhesive Fevi Kwik, in a trademark infringement suit initiated by it against Fixo Industries which manufactures adhesive Fixo Kwik. The Court said that there was sufficient material placed on record to show that prima facie the mark allegedly being used by the defendants would have the tendency of causing confusion in the mind of a purchaser. The use of the word 'KWIK' and the sentence 'ONE DROP INSTANT ADHESIVE' along with the image of a globe create deception and it is found that there is a likelihood of consumers being confused when the defendants' product is placed before them. **Read More**

By Ishani Chakraborty (Assistant Editor)

1. INDIA ADVOCATES FOR THE RESOLUTION OF INTERNATIONAL TRADE IN THE RUPEE WITH SUDAN.

To internationalise its local currency, India has made contact with Sudan to settle international transactions in the rupee. If implemented, India will be able to import crude oil from the African countries and make the payment in local currencies. This can boost exports and save the country's forex reserves that are currently under pressure. Bankers from India and Sudan discussed the details and decided to investigate the possibility of establishing a correspondent banking relationship as well as special rupee vostro accounts between the two countries.

Sudan is India's 75th most important trading partner. In 2021–22, total trade between the two was $1.21 billion, compared to India's total trade of over $1 trillion. During the previous financial year, India exported $1.07 billion in goods while importing only $129 million. To Sudan, India primarily exports food, petroleum, manufactured goods, machinery and equipment, chemicals, including pharmaceuticals, and textiles, while importing sesame seed, cotton, watermelon seeds, hides and skins, and ground nuts. India currently does not import oil from Africa. **Read More**

2. THE UNITED STATES HAS IMPOSED SEVERE RESTRICTIONS ON THE EXPORT OF SEMICONDUCTOR CHIPS TO CHINA.

The Biden administration issued a broad set of export controls, including one that would bar China from purchasing certain semiconductor chips manufactured anywhere in the world using US tools, vastly extending its reach in an effort to stymie Beijing's technological and military advances.

The rules, some of which take effect immediately, build on restrictions imposed earlier this year in letters to top toolmakers KLA Corp, Lam Research Corp, and Applied Materials Inc, which effectively required them to halt shipments of equipment to entirely Chinese-owned factories making advanced logic chips.

The package of measures could represent the most significant shift in US policy toward shipping technology to China since the 1990s. If successful, they could set back China's chip manufacturing industry by forcing American and foreign companies that use US technology to discontinue support for some of China's leading factories and chip designers. **Read More**

3. INDIA OPPOSES A WTO GROUP CONSULTATION ON A FOOD SUBSIDY PROGRAMME.

India has opposed the efforts of a 10-member group of developed and developing countries to hold a group consultation on the food subsidy programme at the World Trade Organization (WTO) rather than a bilateral consultation. Speaking at the WTO General Council meeting, India's ambassador and permanent representative to the WTO, Brajendra Navnit, said he doesn't understand the countries' "reluctance" to consult bilaterally.

"The Bali decision did not provide for this format of consultation." And this is the first time I've heard from WTO members that they are unwilling to engage in bilateral discussions to solve the problem. So sometimes I wonder if this is all just for show to show something back home, or if these members are actually interested in finding a solution to their doubt or clarification, which can be better addressed in a bilateral interaction," he said.

The members were concerned about India's "lack of full transparency" in relying on the Bali Decision as well as in responding to specific questions raised by the Agri Committee. Those members believed that receiving more information on this subject would facilitate participation and a meaningful policy dialogue. **Read More**

4. INDIA-CHINA TRADE HAS SURPASSED THE USD 100 BILLION MARK.

According to trade data released by Chinese customs, bilateral trade between India and China surpassed USD 100 billion for the second year in a row in the first nine months of 2022, while India's trade deficit increased to more than USD 75 billion.
Despite the military standoff in eastern Ladakh, total bilateral trade increased to USD 103.63 billion, representing a 14.6% increase over the same period last year. China's exports to India increased by 31% to USD 89.66 billion, according to data released by China's General Administration of Customs (GAC).

However, India's exports in the last nine months totaled USD 13.97 billion, a 36.4 percent decrease. As a result, the total trade deficit increased to more than USD 75.69 billion. Read More

By Qazi Ahmad Masood (Assistant Editor)

NEWS UPDATES

MERGERS AND ACQUISITIONS

1. CCI APPROVES RELIANCE POLYESTER'S PURCHASE OF SHUBHALAKSHMI POLYESTERS AND SHUBHLAXMI POLYTEX

The acquisition of Shubhalakshmi Polyesters Ltd and Shubhlaxmi Polytex Ltd by Reliance Polyester Ltd has been approved by the Competition Commission of India (CCI). The proposed transaction involves the acquisition of Shubhalakshmi Polyesters Ltd (SPL) and Shubhlaxmi Polytex Ltd (SPTex) as a going concern on a slump sale basis by Reliance Polyester Ltd (RPL).

Reliance Polyester Ltd, a wholly-owned subsidiary of Reliance Industries Ltd, executed definitive documents last month to acquire the polyester business of Shubhalakshmi Polyesters Ltd and Shubhlaxmi Polytex Ltd for cash consideration of Rs 1,522 crore and Rs 70 crore, respectively, for a total of Rs 1,592 crore in a slump sale on a going concern basis. **Read More**

2. YES BANK GETS CCI APPROVAL TO SELL UP TO 10% STAKE EACH TO CARLYLE, VERVENTA HOLDINGS

Yes Bank has received approval from India's competition regulator, the Competition Commission of India to sell 10% stakes to global private equity investors - the Carlyle Group and Verventa Holdings (an affiliate of Advent International). The Commission approved the Proposed Combination, which involved the acquirers acquiring equity securities equal to up to 10% of Yes Bank's total paid-up share capital and voting rights.

Yes Bank said the funds will help it achieve its medium- to long-term sustainable growth goals and boost capital adequacy, making it one of the largest private capital raises by an Indian private lender. The bank proposed issuing up to 1.84 billion equity shares to Carlyle and Verventa for Rs 13.78 per share. **Read More**

3. DABUR ACQUIRES MAJORITY STAKE IN BADSHAH MASALA FOR ₹587.5 CRORES

Dabur India said today that it has inked definitive agreements to buy a 51% stake in Gujarat-based spice company Badshah Masala for Rs.587.52 crores. Badshah is a manufacturer, marketer, and exporter of ground spices, blended spices, and seasonings.
The acquisition, according to the company, is in keeping with Dabur's strategy objective to grow its food business to 500 crores in three years and expand into new adjacent categories. Dabur noted in a news release that, "This also marks Dabur's foray into India's over 25,000 crore branded spices and seasoning market."

Dabur is paying 587.52 crores for the majority stake, less proportional debt as of the closing date. The transaction values the company at Rs. 1,152 crores. This amounts to a revenue multiple of around 4.5x and an EBIDTA multiple of about 19.6x of the expected financials for FY2022-23. **Read More**

4. US JUDGE HAS BLOCKED A $2.2 BILLION MERGER BETWEEN PENGUIN RANDOM HOUSE AND RANDOM HOUSE

A US judge has blocked Penguin Random House, the world's largest book publisher, from merging with rival Simon & Schuster for $2.2 billion.

In a brief order issued on Monday, Judge Florence Pan of the US District Court for the District of Columbia stated that the justice department had demonstrated that the deal would "substantially" harm competition "in the market for the US publishing rights to anticipated top-selling books." The government identified bestselling titles that were the subject of bidding wars between PRH and Simon & Schuster, claiming that the competition had increased the author's pay.

The top five publishers control 90% of the market. A combined PRH and Simon & Schuster would control 49% of the market for blockbuster books, while its nearest competitors would be less than half its size. **Read More**

5. MAXAMTECH DIGITAL VENTURES WILL BE ACQUIRED BY QYOU MEDIA INDIA FOR A MAJORITY STAKE

QYOU Media India has announced the execution of a binding term sheet to acquire a majority stake in Maxamtech Digital Ventures, a six-year-old India-based venture that develops technology and games for the mobile gaming industry. As the year progresses, QYOU Media India will be pushed to expand its portfolio of direct-to-consumer products. This includes recent announcements about the QPLAY app's launch and a subsequent co-marketing agreement for QPLAY to run during the current T20 World Cup Cricket competition.

The mobile gaming business in India has witnessed an unprecedented rise in recent years, revenue in the mobile gaming business is expected to reach over $5 billion in 2025, largely fuelled by the discovery and adoption of casual and free-to-play games, a specialty of Maxamtech's Gaming 360 platform. Read More

By Qazi Ahmad Masood (Assistant Editor)

1. 1.SEBI CAN'T PROSECUTE COMPANY FOR DELAY AFTER PAYMENT OF DIVIDENDS: KARNATAKA HIGH COURT

The Karnataka High Court has said that the Securities and Exchange Board of India (SEBI) has no power to initiate any action against a company or its directors which has defaulted in payment of dividend within 30 days as specified under Section 207 of the Companies Act, 1956, after payment of dividend.

In the present case, the company in its Annual General Board Meeting had resolved to declare dividends to its shareholders.

Since the Company did not pay the dividends as resolved in its meeting, the respondent (SEBI) issued several notices to the Company calling upon the Company to pay the dividends. The company having not paid dividend within 30 days, was said to have committed the aforesaid offences. The court held that a combined reading of Section 55(A) and Section 207 clearly indicates that the SEBI is vested with the power to safeguard the interests of the shareholders in the matter of non-payment of dividends but SEBI can't initiate any action against the company after the payment of dividend. **Read More**

2. SAT ORDERS INTERIM STAY ON SEBI ORDER AGAINST BRICKWORK RATINGS

The Securities Appellate Tribunal (SAT) has put a stay on a decision by market regulator, SEBI, to wind down the operations of Brickwork Ratings India. Keeping the cancellation of licence on hold, the tribunal maintained the ban on onboarding any new client, as directed by SEBI. Brickwork Ratings cannot take up any new assignments till the next hearing, which is November 15, according to the oral order passed by SAT.

The decision by SEBI to shut the operations of Brickworks within six months, citing "failure to exercise proper skill, care and diligence" while discharging duties, was the first such action against a credit ratings agency. In its order, the market watchdog highlighted several

violations by Brickwork. An enquiry report submitted in April 2021 had several adverse observations about Brickwork, following which it was recommended that its licence should be cancelled. Brickwork Ratings had received its licence in 2008, and is one of the seven credit rating agencies registered with SEBI. Crisil, ICRA, CARE, Fitch, Infomerics Ratings and Acuite Ratings are the other entities. **Read More**

3. SEBI BARS BOMBAY DYEING AND OTHERS FROM SECURITIES MARKET

SEBI has barred Bombay Dyeing and Manufacturing Company Ltd from the securities markets for two years after finding the firm, a sister company and several executives had misrepresented financial statements. SEBI also imposed fines totalling 157.5 million rupees ($1.91 million) on the named parties for "being involved in a fraudulent scheme of misrepresenting the company's financial statements".

One of the oldest conglomerates in India, the Wadia Group (firm's parent company) operates in several diversified industries, including consumer goods, real estate, civil aviation, textiles, chemicals and food processing. Bombay Dyeing is engaged in real estate, polyester and textiles. The two-year markets ban also applied to Bombay Dyeing's owners, Nusli N Wadia and his sons, Ness and Jehangir. The regulator said it had conducted a detailed investigation into the affairs of Bombay Dyeing from 2011-2012 and 2018-2019. **Read More**

4. SAHARA INDIA COMMERCIAL CORPORATION: SC STAYS SAT ORDER LIFTING SEBI'S ATTACHMENT DIRECTIVE

SEBI has modified the book building process for private placement of debt to address the concern of 'fastest finger first'. SEBI wants to address the issues of allotment based on time priority in bidding for issuances with fixed parameters, certain bidders not getting allocations despite having worked on issuance pre-listing, high ratio of greenshoe to base issue size and limits on arrangers placing bids on behalf of clients.

SEBI has also allowed introduction of the concept of 'anchor investor' as an option, in order to enable issuers to assess the demand and receive assurance from certain prospective investors towards subscription. It said the quantum of allocation to anchor investors will be at the discretion of the issuer, subject to total allocation to anchor investors not exceeding 30% of the base issue size. The regulator also tweaked rules on the threshold limits for applicability, bidding limits for arrangers and penalty in case of default. The new rules would be effective from January 1, 2023. **Read More**

5. BSE GETS SEBI'S APPROVAL TO SET UP A SEPARATE SOCIAL STOCK EXCHANGE

SEBI has granted its in-principle approval to BSE for introducing a social stock exchange as a separate segment. Social stock exchange will enable the listing of non-profit organisations and for-profit social enterprises that are engaged in 15 broad eligible social activities approved by the market regulator. These social entities can raise funds through equity, issue of zero-coupons zero-principal bonds, mutual funds, social impact funds and development impact bonds.

Last month, SEBI came out with a detailed framework for social stock exchange, specifying minimum requirements for a Not-for-Profit Organisation (NPO) for registering with the bourse and disclosure requirements.In its circular, the regulator specified minimum requirements to be met by a NPO for registration with SSE, disclosure requirement for NPOs raising funds through the issuance of zero-coupon zero principal instruments and put in place annual disclosure requirements that needs to be made by NPOs on such exchanges. Corporate foundations, political or religious organisations or activities, professional or trade associations, infrastructure and housing companies, except affordable housing, will not be eligible to be identified as a social enterprise. Read More

By Arnav Mahajan (Assistant Editor)

NEWS UPDATES

TAXATION LAWS

1. CENTRE RAISES THE WINDFALL PROFIT TAX ON DIESEL AND ATF EXPORTS, AS WELL AS THE TAX ON DOMESTIC CRUDE OIL

The government increased the tax on windfall profits on locally produced crude oil by 37.5% to 11,000 per tonne and increased the levy on diesel exports by 140% to 12 per litre, while reimposing it on jet fuel exports at 3.50 per litre, as global oil prices rose this fortnight after the producers' cartel - the Organization of Petroleum Exporting Countries and its allies - decided to cut output drastically.

The taxes were raised following a fortnightly assessment of worldwide oil prices on Saturday. According to a statement from the finance ministry, the higher tariffs will go into effect on Monday. The windfall profit tax on petroleum products is being reviewed for the seventh time every two weeks since it was implemented on July 1, 2022.

After the previous round of fortnightly reviews, the government decreased the taxes significantly, with the tax on crude falling from $10,500 per tonne to 8,000 starting October 2, and the tax on diesel exports dropping from $10 to $5 since international petroleum prices fell considerably below $90 a barrel. **Read More**

2. VAT DEFAULTER NOT LIABLE TO PAY COLLECTION CHARGES IF OPTS AMNESTY SCHEME: KERALA HIGH COURT.

The petitioner had settled the liabilities in accordance with the requirements included in the Amnesty Scheme of 2017, which was implemented under the provisions contained in the Kerala Finance Act 2017.

The court stated that the assessed/defaulter is not required to pay any collection charges under Section 31A (2) of the Kerala Finance Act, 2017. Section 31A (2) of the Kerala Finance Act of 2017 begins with a non-obstante clause and hence has precedence over any conflicting provision in the Revenue Recovery Act or the Rules adopted thereunder.

The petitioner/assessed was subjected to revenue recovery proceedings in order to recover money owed to the petitioner under the terms of the Kerala Value Added Tax Act. The petitioner repaid the funds, and the writ petition was dismissed by judgement, directing the government to consider the petitioner/allegations. assesses the government launched the 2017-Amnesty Scheme while the matter was being considered, as required by the verdict, and the petitioner applied for the settlement of the demands against him under the provisions of the Amnesty scheme. The petitioner remitted the total amount payable under the Amnesty Scheme after the application was accepted. **Read More**

3. ITC CAN BE CLAIMED UNDER MARGINAL SCHEME ON RENT, ADVERTISEMENT EXPENSES, COMMISSION, PROFESSIONAL EXPENSES: AAR

The Karnataka Authority of Advance Ruling (AAR) has ruled that the marginal scheme input tax credit (ITC) on charges such as rent, advertisement expenses, commission, professional expenses, and other similar expenses is subject to sections 16 to 21 and rules 36-45 of the CGST Act and Rules 2017.

The two-judge bench of M.P. Ravi Prasad and Kiran Reddy T. has ruled that ITC on capital goods can be claimed under the marginal scheme, subject to sections 16 to 21 and rules 36-45 of the CGST Act and Rules 2017.

Another question addressed was whether ITC may be claimed on capital items for the Applicant under the Marginal Scheme. Section 16 of the CGST Act 2017 deals with the eligibility and conditions for claiming input tax credit, and there is no restriction on registered taxpayers claiming input tax credit on input services and corresponding expenses such as rent, advertisement expenses, commission, professional expenses, other like expenses, and capital goods while under the margin scheme (CGST Rule 32(5)).
The applicant can claim input tax credits on expenses for input services and capital goods, according to the AAR, subject to sections 16 to 21 and rules 36-45 of the CGST Act and Rules 2017. **Read More**

By Qazi Ahmad Masood (Assistant Editor)

NEWS UPDATES
TMT LAWS

1. GOOGLE, META, AND APPLE'S INDUSTRY GROUP OPPOSES THE DRAFTED TELECOM BILL, CITING A THREAT TO ENCRYPTION

An industry body representing big tech names such as Meta, Apple, Alphabet, and Amazon has opposed the draft Indian Telecommunications Bill, stating that provisions of the bill can now force messaging platforms such as WhatsApp and Signal to break encryption and disclose messages to the government in response to surveillance orders.

The main source of concern is Clause 24(2) of the bill, which broadens the scope of surveillance to "telecommunications services or telecommunication network." Telecommunication services are defined as OTT communication services, internet-based communications, internet, and broadband services, and so on in the bill's definition sections. In the letter, the Asia Internet Coalition (AIC) pointed out that under the current unified licence framework, licensees are prohibited from employing bulk encryption equipment in their networks. This lack of clarity, the AIC explained, may inhibit OTT service providers from implementing encryption methods to enhance security. **Read More**

2. THE GOVERNMENT INTRODUCES NEW POLICY CHANGES FOR SATELLITE COMMUNICATION SERVICES

To simplify procedures and improve regulatory processes for satellite communications services, the government introduced new policy reforms. It also prodded the telecom sector to significantly speed up the installation of 5G towers. The speed of tower deployment for 5G, which is now only 2,500 per week, is "extremely less," according to Telecom Minister Ashwini Vaishnaw, and must be boosted to at least 10,000 per week. Vaishnaw criticized the telecom sector for the delayed rollout of 5G towers, claiming that the government had done its part in bringing about sectoral reforms and that the sector now needed to step up and do its part to enable a speedier rollout of 5G.

The country's most rural regions will receive digital services thanks to satellite communications changes. In 7-8 months, the satellite communications services should go live. **Read More**

3. 36 BROADBAND SATELLITES ARE SUCCESSFULLY LAUNCHED INTO LOW-EARTH ORBIT BY ISRO'S BIGGEST ROCKET

A difficult mission was successfully completed by India's largest rocket, injecting 36 broadband satellites for a UK-based customer into precise orbits. This mission strengthens ISRO's standing as a significant player in the commercial satellite market.

Other than the workhorse PSLV used by ISRO, this was the first venture into the commercial space sector by an Indian launch vehicle. India now has a presence in the market for heavier launch vehicles.

But the goal of the mission was not just to help India establish itself as a more powerful player in the commercial space market (currently, India accounts only for 2 percent of the market despite being one of the foremost space-faring countries). This launch vehicle successfully placed several satellites into low earth orbit for the first time. **Read More**

4. THE US HAS CHARGED TWO CHINESE CITIZENS WITH HINDERING THE HUAWEI INVESTIGATION

Prosecutors claim that the two individuals made an effort to enlist a member of US law enforcement as an intelligence asset to obstruct the investigation. However, the official was a double agent with the FBI. In two further espionage instances, eleven additional Chinese people were also accused. The two men, identified as Gouchun He and Zheng Wang in the charging documents, allegedly made an effort to build a connection with a US law enforcement official and requested information about the investigation, including witnesses, evidence, and prospective criminal charges. They also requested that the official surreptitiously record talks regarding trial strategy.

US officials chose not to name the business. The official received payments from the two alleged spies totalling tens of thousands of dollars in cash and jewellery, including $41,000 in Bitcoin for a picture of a single "classified" page that allegedly discussed a scheme to indict and detain corporate leaders. Only last week were additional payments made. **Read More**

By Qazi Ahmad Masood (Assistant Editor)

EDITORIAL COLUMN

SPECTRUM MANAGEMENT AND OVER-THE-TOP MEDIA APPS IN INDIA- VIS-À-VIS THE DRAFT TELECOMMUNICATION BILL, 2022

1. Introduction

With an estimated 1.17 billion subscribers and some key policy interventions that were made recently, India has become the second-largest telecom market in the world. This sector is one of the largest contributors to the Indian GDP and in the past few years, 100% Foreign direct investment (FDI) was approved for it. The government even allowed deferred payments from telecom companies due to their strained financial conditions. In the midst of the slew of developments in the sector, the Government has released the **Draft Indian Telecommunication Bill, 2022** now to reform the existing telecom laws and regulations.

The areas in which the bill aims to bring changes are spectrum assignment, licensing internet-based apps (primarily Over-the-Top platforms (OTTs) and Games), dilution of TRAI's role and coordination with other agencies, easing criminal penalties, and giving the government a wide expanse of shutdown and surveillance powers. The Indian Telegraph Act, 1885 serves as the foundation for the current regulatory structure for the telecommunications industry. Since the "telegraph" era, telecommunication's nature, methods of use, and technologies have all drastically changed. The government has also launched a number of schemes over the last eight years to help the telecommunications industry expand. These steps include expediting the SACFA clearance process for mobile towers, rationalizing the definition of AGR, rationalizing bank guarantees and interest rates through the automated route, delicensing of frequency bands, etc. The Bill will replace the existing legal framework governing telecommunication in India, comprising of the Indian Telegraph Act, 1885, the Wireless Telegraphy Act, 1933 and the Telegraph Wires (Unlawful Possession) Act, 1950.

The article shall discuss how spectrum management and licensing internet-based apps (Primarily Over the Top Platoforms) operated in India and what were the issues faced by them, along with the reforms that can be brought by this Bill.

2. Spectrum Management

Spectrum (also sometimes referred to as airwaves or frequencies) is a scarce natural resource. Earlier, it was thought that spectrum was the property of government, but in 1995, the Supreme Court held that these airwaves or frequencies are a public property and should be used by a public authority in the interest of the people and to prevent the invasion of their rights. As a result, just like other scarce public resources, its distribution must be effective to safeguard the public's interests by eliminating waste and boosting public utility. Given this context, it would appear useful to have a general understanding of the problems associated with the distribution of telecom spectrum in India as well as the regulatory implications of such distributions.

The Department of Telecommunications (DoT) of the Government of India has the duty to assign spectrum and see for the best interest of the people and ensure better access to telecommunication services. There may be a possibility for the notification of national frequency allocation plan (NFAP) for the usage and allocation of spectrum. The primary mode through which the government assigns spectrum is auction, though an exception can be provided if there is an administrative process for governmental functions or in the interest of the public. For cellular services, DoT opted to have two suppliers per area, and for normal services, one other operator per area in addition to DoT.

Spectrum management issues arise in developing nations like India due to:

- a lack of alternative wired access network infrastructure for broadband access;
- a relatively high mobile phone penetration rate and the resulting demand for wireless broadband, and;
- an insufficient spectrum allocation for mobile services.

The complexity of spectrum management makes it incumbent to deploy frameworks of analysis that go beyond simplistic considerations of economic efficiency, However, this Bill is a positive step towards the promotion of optimal use of the available spectrum. It aims to establish a monitoring and enforcement mechanism to ensure adherence to terms and conditions of spectrum usage and enable interference-free use of the assigned spectrum. The Bill provides a supportive framework for the Optimal utilization of spectrum. These include the subsequent clauses:

- Technology agnostic use: A spectrum assignee may introduce new technologies inside its spectrum in order to facilitate the use of the spectrum in a liberalized and technologically neutral way.
- Re-farming and re-purposing: Rearranging the frequency range is frequently necessary to enable repurposing of any frequency band for a new usage. As a result, the Bill calls for re-farming and frequency range harmonization.
- Sharing, trading, leasing, and surrender: The bill permits sharing, trading, leasing, and surrender of allotted spectrum under specified terms and conditions in order to facilitate effective spectrum usage.
- Returning unused spectrum: The Bill provides a method for returning unused spectrum to ensure effective usage of spectrum.

3. OTT Platforms and their regulation

One of the key features of the Bill is that it proposes to regulate the over-the-top (OTT) platforms and bring it under the ambit of telecom services. The key rationale behind such change was to ensure that voice, video, and other data related services provided by OTT platforms like WhatsApp, Google Meet, etc. were regulated at equal footing like that of the other telecom services.

The tech community opposes the bill. Their contention is based on the ground that such rules may lead to over regulations which in the long run may act as a hurdle and stifle innovation and possible advancements in technology. This is so because these platforms are already regulated by provisions under various laws. The telcos on the other hand support such amendments as they would ensure that the OTT platforms which provide video, audio related services are brought under the same licensing and regulatory regime as applicable in the telecom industry. In its proposal, the government stated that if it is in the "public interest," it may exempt entities from the obligation of acquiring a license, registration, and authorization. As per section 24 of the Bill, the central and state governments, as well as authorized officials, may intercept information sent or received over telecommunication services in the interest of the sovereignty, integrity, or security of India, friendly relations with foreign states, public order, or preventing incitement to an offense. Additionally, the draft Bill gives the Union government the authority to grant relief to any licensee in the event of extraordinary circumstances, such as "financial stress, consumer interest, maintaining competition in the sector, or reliability and continued supply of telecommunication services," by deferring, converting into equity, waiving off, or doing so.

While some form of regulation for OTT services, such as requiring non-discrimination, privacy standards, or regulation to protect revenues, or offer emergency services, is not unusual, licensing for software is essentially unheard of, and the proposal has already encountered a great deal of opposition. Such regulation may pose a grave challenge to innovation introduced by these platforms. Additionally, the digital economy as well as user privacy may also be challenged due to the proposed regulations. The key thing to keep in mind is that there has been a long history of disagreements in India around revenue-sharing commitments, audit standards, and allowed activities.

4. Conclusion

Recently, the government has legalized in-flight Wi-Fi, enabled 100% FDI in the sector, deregulated BPOs and call centers to a considerable extent. The proposed Telecommunication Bill, 2022 aims to modernize the sector, and consequential amendments have been introduced to the current telecom rules and regulations. Several changes have been introduced. The aforementioned article discussed two of the major changes introduced- provisions related to spectrum and OTT platforms. The bill called for public comments on the draft. Several technological changes and innovations continue to happen in the telecom sector. What has to be seen now is to what extent and in what direction the draft bill with these relevant changes affects the dynamic sector as it continues to develop over time.

EDITORIAL COLUMN

When putting forth the Draft Bill, the DoT took into account laws from countries with relatively uniform telecom regulations, such as the UK (and the EU), Australia, and Singapore, as well as laws from countries with more dispersed telecom regulations, such Japan and the US. The essential choice to be made was whether to establish a broad power to license and regulate diverse telecommunications services, as is the case in Singapore, or to naturally identify that certain sorts of activity would simply not be controlled. By reserving some sort of an exclusive privilege to offer telecommunications services, set up and run telecommunications networks and infrastructure, and use and assign spectrum, the DoT has categorically chosen the former and built on the strategy under the Telegraph Laws.

The Indian Telecommunications Bill, 2022 is a brave and encouraging move towards A *self-reliant India* in the telecom industry, even though there are some inherent ambiguities in the licensing system and most of the operational parts of the law would be under the rules to be established

So, to secure the desired outcome, however, some changes may be incorporated in the Draft Bill. For example, there is a need for a data protection clause in the Bill as the same in the current form can prove to be a challenge for the user privacy associated with the OTT platforms. The users may be exposed to some vulnerabilities in their privacy, if such issues not addressed properly. There is also need to trace the first originator of messages and decryption under the recently notified Intermediary Guidelines and the obligations. The same needs to be addressed in the draft bill.

By Ms. Vanshika Samir (Associate Editor)
and Mr. Dhiren Gupta (Assistant Editor)

CALL FOR COMMENTS

THE RESERVE BANK PROPOSES TO PRESCRIBE A MASTER DIRECTION ON INFORMATION TECHNOLOGY GOVERNANCE, RISK, CONTROLS AND ASSURANCE PRACTICES, TO BE IMPLEMENTED BY THE REGULATED ENTITIES (RES), SEEKS COMMENTS FROM THE PUBLIC

The RBI (Reserve Bank of India) has asked for comments /feedback from Regulated Entities (RE) and other stakeholders, In February 2022, the Reserve Bank of India announced in the Statement on Developmental and Regulatory Policies, which was released alongside the bi-monthly Monetary Policy Statement, that guidelines pertaining to Information Technology Governance and Controls, Business Continuity Management, and Information Systems Audit needed to be updated and consolidated.

As a result, as part of the consolidation and updating of existing instructions, the RBI has posted a 'Draft Master Direction - Information Technology Governance, Risk, Controls, and Assurance Practices' on its website for stakeholders and members and can be sent by email to mditgovcomments@rbi.org.in by November 20, 2022. **Read More**

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