RFM
Law Review

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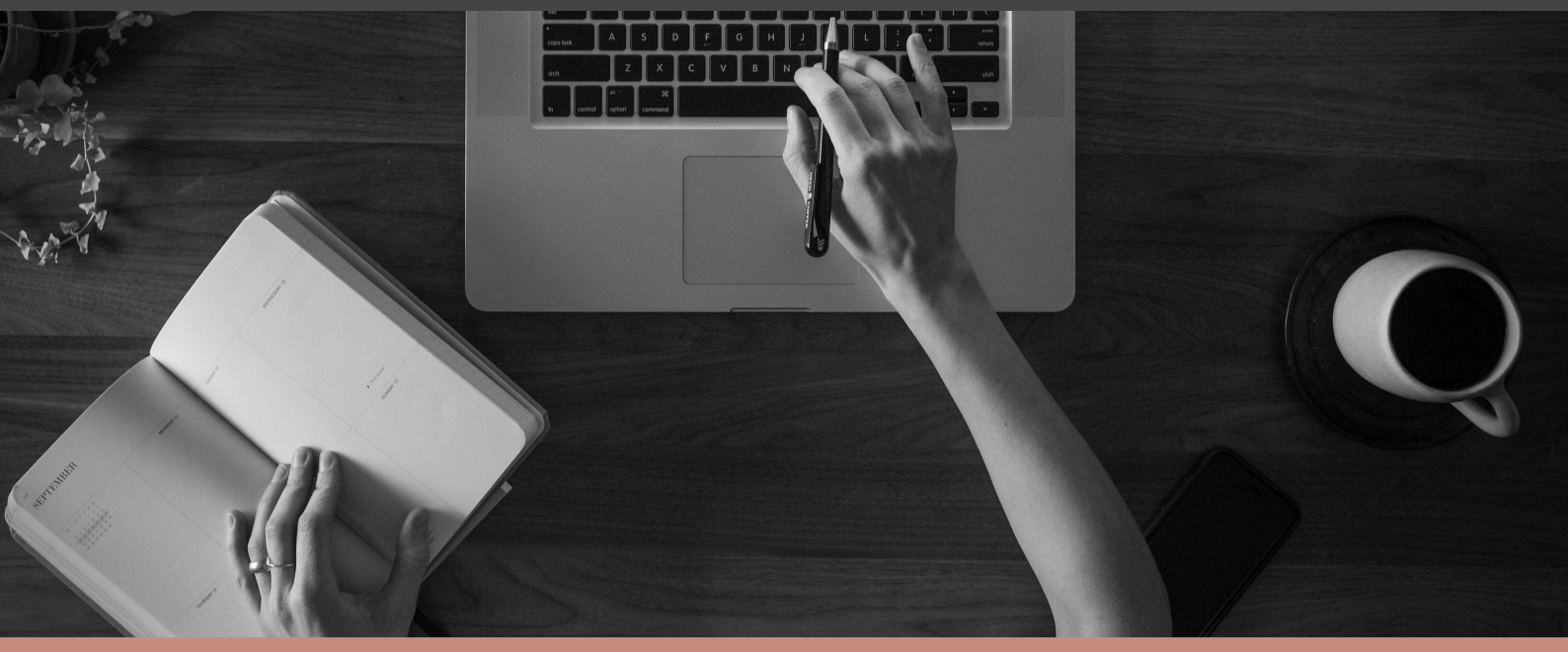
IN THIS ISSUE



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 analysed succinctly in the 'Highlights' section to provide readers some food for thought. These include short comments on the Supreme Court's recent decisions on allowing the Government Appeal Barring Bharti Airtel from Rectifying Return for ₹923-Cr. GST Refund and on determining the Vicarious Liability of Key Managerial Personnel in Criminal Charges Framed against the Company, a brief analysis of the Zee-Invesco Battle and a succinct summary of Tata's Winning Bid on Air India.

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

Further, the 'Recent on the Blog' section provides the readers with a quick guide to the latest pieces published on the blog. Furthermore, the Editorial Column section contains a piece by Talin Bhardwaj (Senior Editor, RFMLR) and Raghav Sehgal (Copy Editor, RFMLR) titled 'The "Heavy Hand" of CCI: Analyzing the Recent Imposition of Fine on the Beer Cartel'.

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. Comments are invited on the Circular on Consolidation of and Re-Assurance of Debt Securities and on the Draft Mediation Bill, 2021.

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

HIGHLIGHTS

THE APEX COURT ALLOWS GOVERNMENT APPEAL BARRING BHARTI AIRTEL FROM RECTIFYING RETURN FOR ₹923-CR. GST REFUND

The Supreme Court of India on October 28, 2021, upheld the government's appeal and dismissed Delhi High Court's May 2020 order that allowed Bharti Airtel to claim Rs 923 crore as refund of excess Goods and Services Tax (GST) returns filed by the telecom company in July-September 2017. A bench of Justices AM Khanwilkar and Dinesh Maheshwari, headed by Justice A.M. Khanwilkar, also ruled that an assessee cannot be permitted to unilaterally carry out rectification of returns submitted electronically in Form GSTR-3B as it would lead to unending uncertainty in tax administration.

The GST law mandates all taxpayers, except those registered under the composition scheme, to pay tax on a monthly basis and file form GSTR-3B by the 20th of the following month. The matter was related to rectification of return and pertained to 2017 when GST had just been introduced, and the Bharti Airtel paid excess cash towards GST to the tune of Rs 923 crore, instead of utilizing the available input tax credit, as there was no automated reconciliation available at that time. Bharti Airtel appealed before the Delhi High Court claiming Rs 923 crore as refund of excess GST returns and the High Court while allowing Airtel's plea before it and directing the government to verify the excess GST claim within two weeks of the order and refunding the amount to Bharti Airtel, also permitted the telco to make corrections to the GSTR-3B forms for the period between July and September 2017.

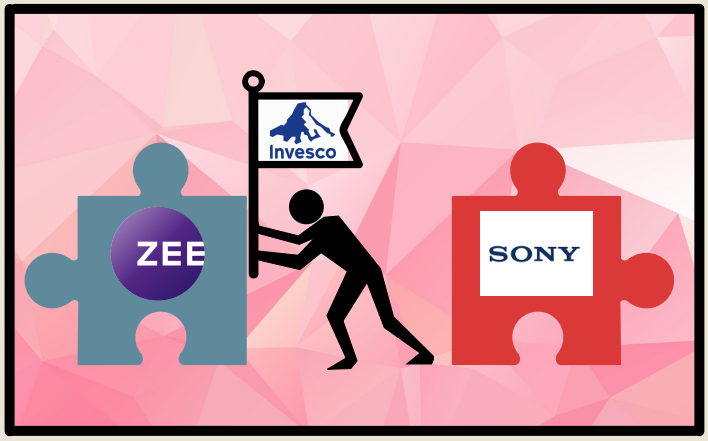
Subsequently, the Finance Ministry filed an appeal against this Delhi High Court order. The Apex court observed and stated that despite a mechanism provided under GST law and subordinate legislation, that is, Section 39(9) of CGST Act (read with rule 61 of CGST Rules) concerning rectification of any omission or incorrect particulars in the monthly return, it was not open to the High Court to proceed on the assumption that the only remedy for the assessee to enjoy seamless utilization of the input tax credit was by rectification of its return submitted in form GSTR-3B for the period in which the error occurred. Furthermore, it was also stated that any unilateral change in such return, as per the present dispensation, would have a cascading effect on the recipients and suppliers associated with the transactions.

Reacting to this judgement delivered by the Apex court, Rajat Mohan, Senior Partner with AMRG & Associates (a firm of Chartered Accountants set up in 1984), stated that, "this ruling would be a blow to a plethora of cases where taxpayers were in queue to claim a time-barred input tax credit by rectifying the previous period's GST returns". Furthermore, the telco's stock dipped 1% on the BSE as a consequence of the Supreme Court order. **Read More**

By *Raghav Sehgal, Copy Editor*

HIGHLIGHTS

ZEE-INVESCO BATTLE COMPLICATING THE ZEE-SONY MERGER



Invesco Limited (Invesco) requested for an Emergency General Meeting (EGM) and called for an overhaul of Zee Enterprise's (Zee's) Board of Directors and removal of Mr. Punit Goenka as the Managing Director (MD) and Chief Executive Officer (CEO) of the Company. The request for the EGM was denied by Zee. Thereafter, attempts were made to hasten the transaction for merger between Zee and Sony Pictures Networks India (Sony) with the aim of concluding a definite agreement.

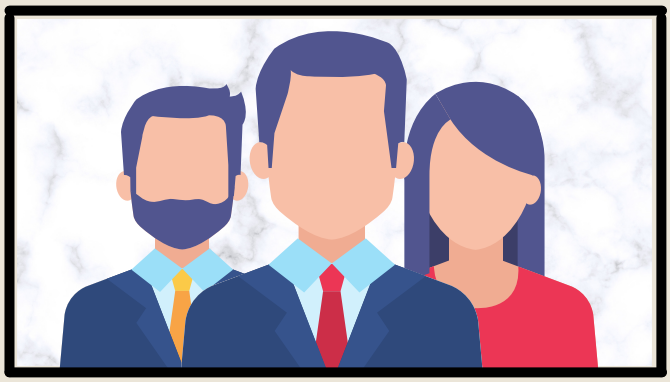
On 11th October, 2021, Invesco released an open letter to Zee's shareholders stating that it was disappointed by the leadership. It also stated that while it was not against the merger, there was a demand for evaluating the deal with Sony. It questioned the rationale behind paying 2% additional equity as non-compete fee to promoters of Zee, even though the current CEO and MD will continue to run the proposed merged entity for the next 5 years. It also argued that the announcement merger casually mentions that Zee promoter family would be allowed to raise their stakes from 4% to 20% without specifying the manner in which this reasonable change will take place. Considering this to be dilutive to all other shareholders, it said that it expected the largess to be contingent on the MD/CEO leaving the said position or be structured in the form of time vesting and performance linked Employee Stock Option Schemes (ESOPs) as a transparent way to award leadership and performance. It called for six new independent directors to join the Board. The Board was to determine the future leadership and evaluate potential strategic transactions including the Sony-Zee merger proposal.

Zee approached the Bombay High Court on October 1 to declare the requisition notice sent by Invesco as illegal. On 26th October, 2021, the Court issued a temporary injunction order which held that Invesco would be temporarily barred from taking actions with regards to the requisition notice sent to Zee, including calling an EGM or removing the director. He observed that Invesco's notice to remove Mr. Punit Goenka as the MD/CEO without proposing a replacement puts Zee into a 'statutory black hole'. He further added, that there are times when a company has to be saved by its own shareholders. While granting this injunction, Justice GS Patel also noted that he does not suggest that shareholder rights be curtailed or abrogated, or they not be allowed to seek what they do but that the manner in which they go about the same must be legally compliant. **Read More**

By *Srishti Kaushal, Associate Editor*

HIGHLIGHTS

VICARIOUS LIABILITY OF KEY MANAGERIAL PERSONNEL IN CRIMINAL CHARGES FRAMED AGAINST THE COMPANY



In *Ravindranatha Bajpe v. Mangalore Special Economic Zone Ltd. & Others Etc.,* the Supreme Court clarified that those involved in the managerial role of the company cannot be made vicariously liable for criminal charges outlined against the company if there are no extensive claims made with respect to their official capacity. Manglore Special Economic Zone Ltd. (MSEZ) obtained authorizations from Department of Public Works for the laying down of a water pipeline beside the Manglore-Bajpe Old Airport Road abutting scheduled properties. The pipeline runs adjoining properties, and a complaint was made by the owner of one such scheduled property, alleging that MSEZ and the contractor for the project trespassed over the property of the complainant, destroying a 7 ft high compound wall and 100 valuable trees while the complainant was out of station. The pipeline was laid down beneath the schedule properties which caused the complainant pecuniary loss of more than Rs. 27 lakhs. The complainant further alleged criminal breach of trust and cheating as he stated that he faced criminal intimidation of questioning the accused of such an act. Therefore, a private complaint against the key managerial personnel of the companies was filed by the complainant.

Finally, under the criminal appellate jurisdiction of the Hon'ble Supreme Court, the complainant's appeal was dismissed. The Supreme Court in its decision, placed heavy reliance on GHCL Employees Stock Option Trust v. India Infoline Limited (2013) and *Sunil Bharti Mittal v. Central Bureau of Investigation (2015).* In the latter case it was held that although a corporate entity acts through its officers, Directors, Managing Director, Chairman, etc., however, there shall be no vicarious liability accrued to the them if there lacks sufficient evidence to substantiate the active role played by them alongside their criminal intent to commit the said act. Further, when the offender is the company, in the absence of any statutory provision present, the vicarious liability of the Directors cannot be imputed automatically. Conclusively, the Court reiterated the vicarious liability provision protecting the interests of personnel at key managerial positions in the company to ensure no personal damage occurs in a situation where their companies are alleged for commission of offences. **Read more.**

By *Jyoti Jindal, Associate Editor*

HIGHLIGHTS

TATA GROUP WINS BID FOR AIR INDIA

The Government approved the highest price bid of Talace Pvt. Ltd. for the sale of 100% equity shareholding of the Government of India. Talace Pvt. Ltd. is a wholly-owned subsidiary of Tata Sons Pvt Ltd. which submitted a winning bid of Rs 18,000 Crore as the Enterprise Value of Air India. The Tatas will now own a 100% stake in Air India, which includes 100% in its international low-cost arm, Air India Express, and 50% in the ground handling joint venture, AI SATS (Airport Services on Ground and Cargo Handling). The Tatas will get ownership of iconic brands like Air India, Indian Airlines & the Maharajah. Air India has a fleet of 117 wide-body and narrow-body aircraft and AIXL has a fleet of 24 narrow-body aircraft. A significant number of these aircraft are owned by Air India. The bid also transfers the liability to pay Air India's total debt which as of August 31, 2021 was Rs 61,562 crore, of which, Talace Pvt Ltd will assume Rs 15,300 crore, while the balance of Rs 46,262 crore will be taken over by the government's Air India Asset Holding Ltd. (AIAHL). Additionally, the Tata Group will also pay Rs 2,700 crore in cash to the government. After the announcement, Tata Sons Chairman Emeritus Ratan Tata welcomed Air India back into the company. "The Tata group winning the bid for Air India is great news! While admittedly it will take considerable effort to rebuild Air India, it will hopefully provide a very strong market opportunity to the Tata group's presence in the aviation industry," he said. Renowned legal firm Cyril Amarchand Mangaldas acted as the legal advisor for Air India in its disinvestment process through a team led by Amita Katragadda whereas AZB & Partners advised Talace Private Limited and Tata Sons through a team headed by Founder & Managing Partner Ms Zia Mody. Tata Sons has also agreed to retail all the employees of Air India for the period of one year. In the second year, if the employees are not retained, they will be offered VRS.

Air India was founded by JRD Tata as 'Tata Airlines', becoming India's first airline in 1930s. Tata Airlines flew its first flight from Mumbai to Trivandrum. Tata Airlines was converted into a public company and renamed 'Air India Ltd'. In 1953, the Government nationalised Air India. After its nationalisation, Air India incurred huge losses. The Ramakrishna Committee in 1998 suggested the disinvestment of Air India but the suggestions were never implemented. The Government appointed SBI in 2009 to prepare a roadmap for the airline's recovery and subsequently, in 2012, the Government approved a $ 5.8 billion bailout for Air India, which was to be received by 2020. Failing to attract even a single bidder, the Government decided to sell 100% stakes of Air India in 2019. The move attracted two bids from Tata Sons and Spicejet. Subsequently, the Tata Sons won the bid in 2021. **Read more.**

By *Vansh Bhatnagar, Junior Editor*

NEWS UPDATES

ALTERNATIVE DISPUTE RESOLUTION

1. ARBITRATOR CANNOT GRANT PENDENTE-LITE INTEREST WHEN CONTRACTUALLY BARRED BY PARTIES: SC

The Supreme Court in Garg Builders v. Bharat Heavy Electricals Limited held that under Section 31(7)(a) of the Arbitration and Conciliation Act, 1996, an arbitrator cannot award Pendente- Lite interest if the contract contains a specific clause that expressly restricts payment of interest. The Court also held that interest payment is regulated by the Interest Act, 1978, and provisions of Section 3 (3) of the Act explicitly allow the parties to waive their claim to an interest by virtue of an agreement. Moreover, under exception I to Section 28 of the Indian Contract Act, 1872, a contract cannot be rendered illegal in which the parties agree to refer to arbitration in case of any dispute. The Supreme Court, therefore, concluded that interest-barring clause of the contract is not ultra vires in terms of Section 28 of the Contract Act. Read more

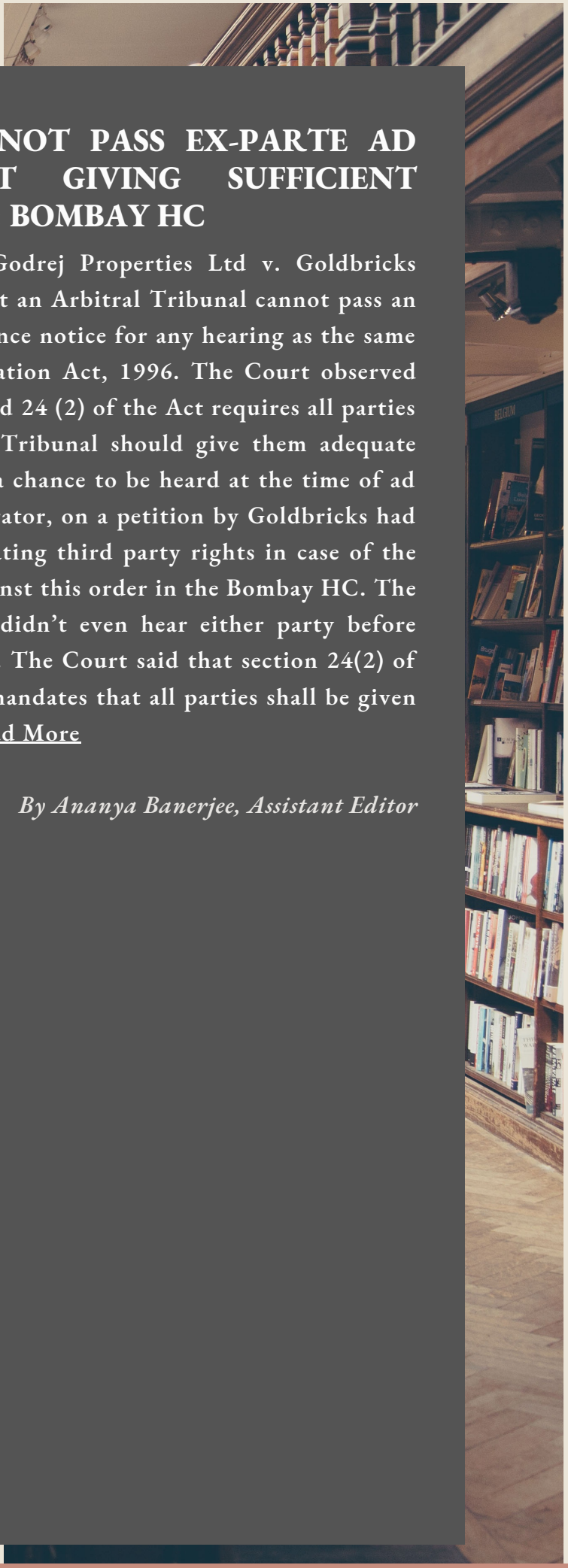
2. ARBITRATOR HAS SUBSTANTIAL DISCRETION IN AWARDING INTEREST UNDER SECTION 31 (7) (A) ARBITRATION ACT: SUPREME COURT

The Hon'ble Supreme Court in *Punjab State Civil Supplies Corporation Limited (Punsup) & Anr. v. Ganpati Rice Mills & Anr*, observed that an Arbitrator has substantial discretion in awarding interest under Section 31(7) of the Arbitration and Conciliation Act, 1996(Arbitration Act). According to the concerned provision of the Act, the Arbitral Tribunal may include interest, at such rate as it deems reasonable, on the whole, or any part of the money, for the period between the date on which the cause of action arose and the date on which the award is made, unless the parties agree otherwise to the extent that an Arbitral Award is for the payment of money. sThe court, therefore, restored the rate of interest to 12% per annum as awarded by the judgment passed by the District Judge. Read more

3. ARBITRAL TRIBUNAL CANNOT PASS EX-PARTE AD INTERIM ORDER WITHOUT GIVING SUFFICIENT ADVANCE NOTICE TO PARTIES: BOMBAY HC

The Bombay High Court in the case of Godrej Properties Ltd v. Goldbricks Infrastructure Pvt. Ltd. has recently held that an Arbitral Tribunal cannot pass an ex-parte order without giving sufficient advance notice for any hearing as the same is mandated by the Arbitration and Conciliation Act, 1996. The Court observed that a combined reading of Sections 18, 19 and 24 (2) of the Act requires all parties to be treated fairly at all stages. Also, the Tribunal should give them adequate opportunity to present their case, including a chance to be heard at the time of ad interim orders. In the present case, the arbitrator, on a petition by Goldbricks had passed an order restraining Godrej from creating third party rights in case of the disputed properties. Godrej had appealed against this order in the Bombay HC. The Court observed that the Arbitral Tribunal didn't even hear either party before passing the order, nor did it issue any notice. The Court said that section 24(2) of the Arbitration and Conciliation Act, 1996 mandates that all parties shall be given sufficient advance notice of 'any hearing'. Read More

By Ananya Banerjee, Assistant Editor



NEWS UPDATES

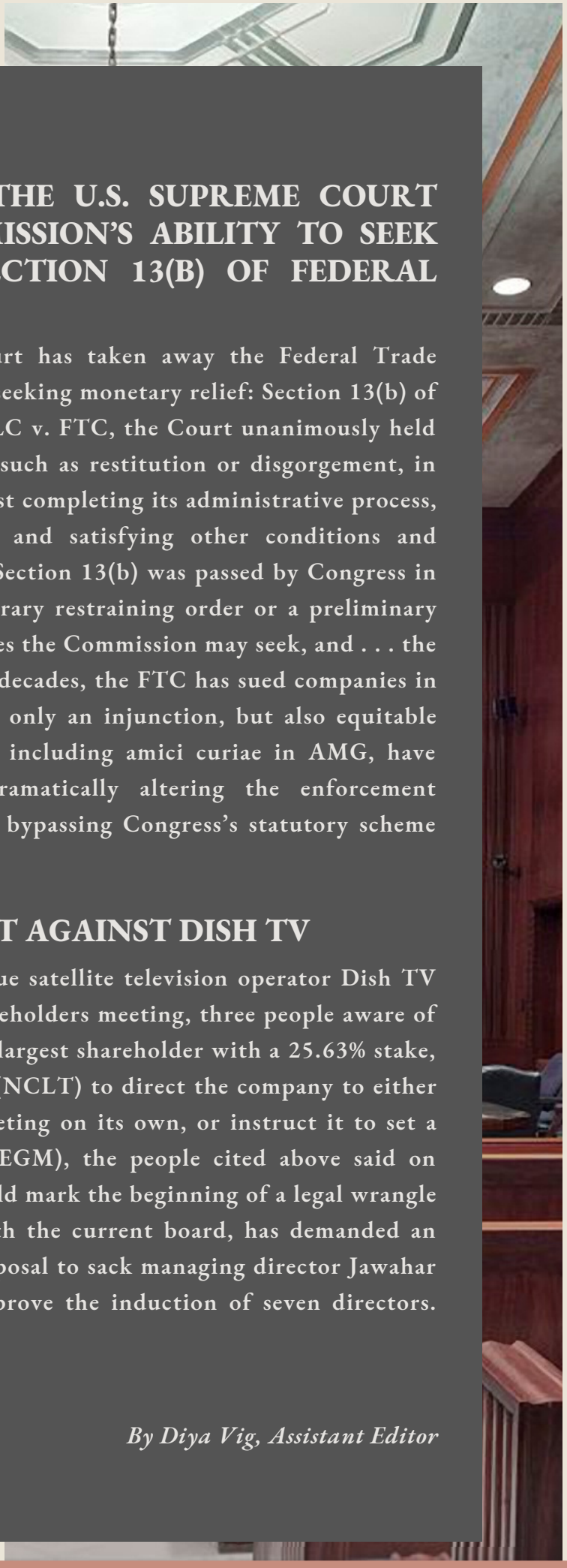
COMPETITION LAW

1. ADIF FILES PETITION BEFORE CCI AGAINST GOOGLE'S NEW PLAY STORE POLICY

The Alliance of Digital India Foundation (ADIF), a New Delhi think tank consisting of entrepreneurs and start-ups, has moved the Competition Commission of India (CCI) to seek interim relief against the implementation of Google Play Store commission till the investigation into the tech giant's abuse of dominance is complete. Google Play Store commission of 30 percent in India will come into effect from March 31, 2022. The relief has been sought by on behalf of App developers as Google's new policy will restrict certain categories of apps to use only Google Billing System (GBS) for accepting payments. The CCI had in November 2020 directed a probe into the issue of mandatory use of Google Play Store's payment system for paid apps & in-app purchases. The commission is of the prima facie view that such a policy is unfair as it restricts the ability of app developers to select a payment processing system of their choice. Read more

2. CCI ISSUES CEASE AND DESIST ORDER AGAINST FIRMS FOUND GUILTY OF BID RIGGING AND CARTELIZATION IN TENDER FLOATED BY FCI

The Competition Commission of India (CCI) issued a final order against six firms which were found to have contravened the provisions of Section 3(1) read with Section 3(3)(d) of the Competition Act, 2002 thereof, which proscribe anti-competitive agreements. CCI found these firms to have indulged in cartelization in the supply of Low Density Poly Ethylene (LDPE) covers to Food Corporation of India (FCI) by means of directly or indirectly determining prices, allocating tenders, coordinating bid prices and manipulating the bidding process. The case was initiated on the basis of a Reference filed on behalf of the FCI. The CCI issued a cease-and-desist order against the firms found guilty of bid rigging and cartelization in the said tenders floated by the FCI. However, the CCI refrained from imposing any monetary penalty considering that four out of six firms had filed lesser penalty applications and admitted their conduct. Read more



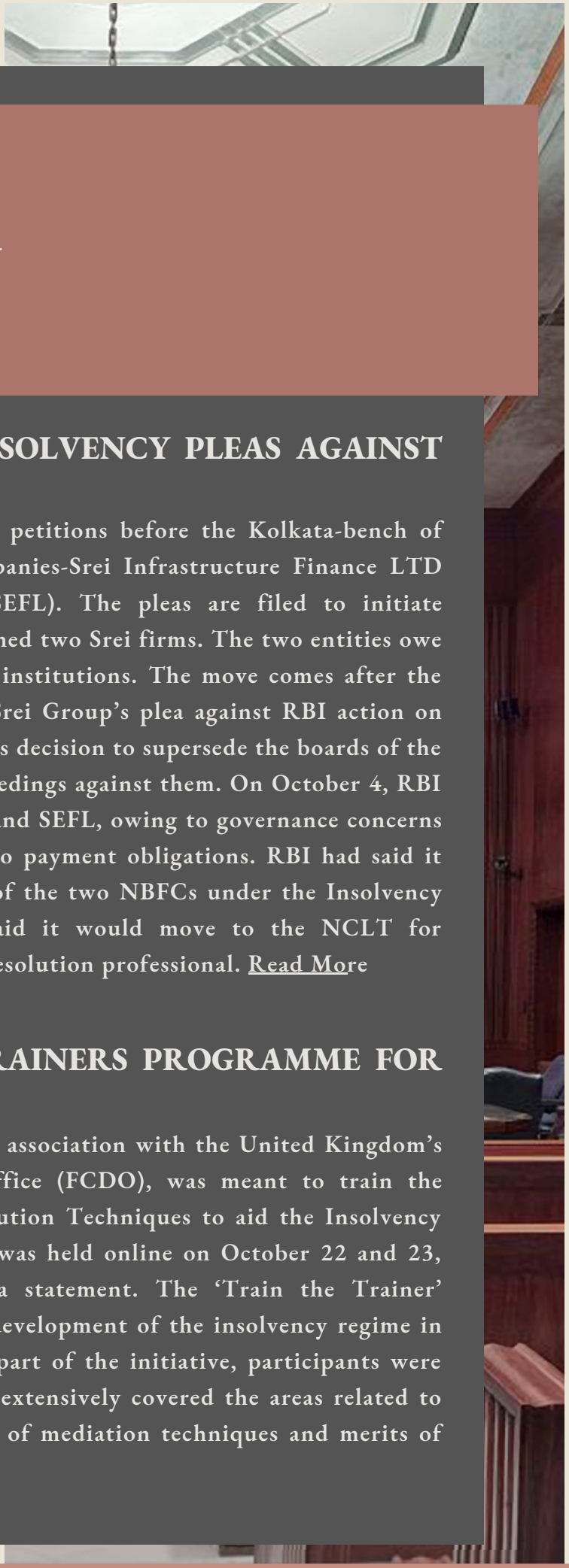
3. UNANIMOUS DECISION BY THE U.S. SUPREME COURT HALTS FEDERAL TRADE COMMISSION'S ABILITY TO SEEK MONETARY RELIEF UNDER SECTION 13(B) OF FEDERAL TRADE COMMISSION ACT

A recent decision by the U.S. Supreme Court has taken away the Federal Trade Commission's (FTC's) most employed tool for seeking monetary relief: Section 13(b) of the FTC Act. In AMG Capital Management LLC v. FTC, the Court unanimously held that the FTC could not seek monetary relief, such as restitution or disgorgement, in Federal Court under Section 13(b), without first completing its administrative process, subject to Commission and judicial review, and satisfying other conditions and limitations under Section 19 of the FTC Act. Section 13(b) was passed by Congress in 1973 and provides, in relevant part, "a temporary restraining order or a preliminary injunction may be granted," and "in proper cases the Commission may seek, and . . . the court may issue, a permanent injunction." For decades, the FTC has sued companies in federal court under Section 13(b) seeking not only an injunction, but also equitable monetary relief. Over the years, commenters, including amici curiae in AMG, have criticized this use of Section 13(b) as dramatically altering the enforcement environment and parties' expectations, and as bypassing Congress's statutory scheme under Section19.

4. YES BANK TO APPROACH NCLT AGAINST DISH TV

Yes Bank Ltd is finalizing the paperwork to sue satellite television operator Dish TV India Ltd over its refusal to hold a special shareholders meeting, three people aware of the matter said. The private lender, Dish TV's largest shareholder with a 25.63% stake, will ask the National Company Law Tribunal (NCLT) to direct the company to either share shareholder details so it can call the meeting on its own, or instruct it to set a date for an Extraordinary General Meeting (EGM), the people cited above said on condition of anonymity. The development would mark the beginning of a legal wrangle for control of Dish TV. Yes Bank, miffed with the current board, has demanded an EGM where shareholders could vote on its proposal to sack managing director Jawahar Goel and four independent directors, and approve the induction of seven directors. Read more

By Diya Vig, Assistant Editor



NEWS UPDATES

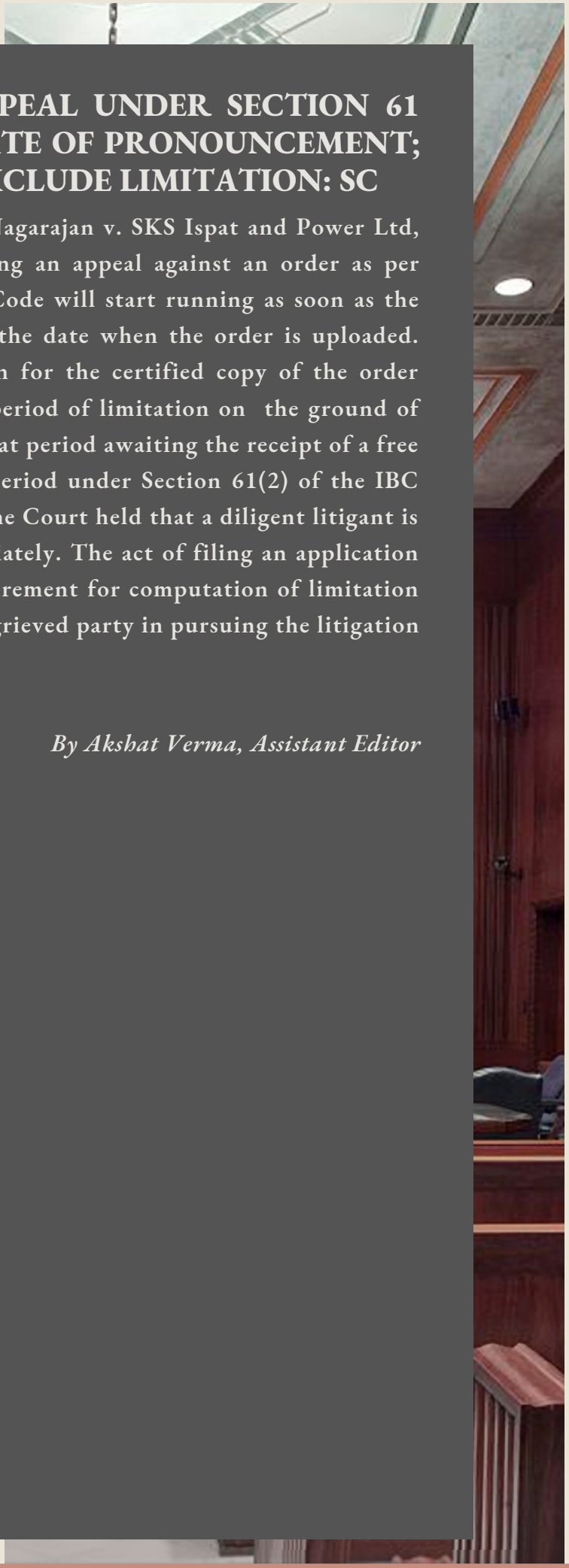
INSOLVENCY LAW

1. RBI MOVES NCLT TO FILE INSOLVENCY PLEAS AGAINST TWO SREI GROUP FIRM

The Reserve Bank of India filed two distinct petitions before the Kolkata-bench of NCLT against two non-banking finance companies-Srei Infrastructure Finance LTD (SIFL) and Srei Equipment Finance LTD (SEFL). The pleas are filed to initiate insolvency proceedings against the aforementioned two Srei firms. The two entities owe over Rs. 30,000 crores to banks and financial institutions. The move comes after the Bombay High Court on October 7 dismissed Srei Group's plea against RBI action on SIFL and SEFL. Srei Group had challenged RBI's decision to supersede the boards of the two firms and set into motion insolvency proceedings against them. On October 4, RBI had superseded the board of directors of SIFL and SEFL, owing to governance concerns and defaults by the companies in concurring to payment obligations. RBI had said it intended to initiate the process of resolution of the two NBFCs under the Insolvency and Bankruptcy Rules, 2019. It had also said it would move to the NCLT for appointing an administrator as the insolvency resolution professional. Read More

2. IBBI HOLDS TRAINING OF TRAINERS PROGRAMME FOR INSOLVENCY PROFESSIONALS

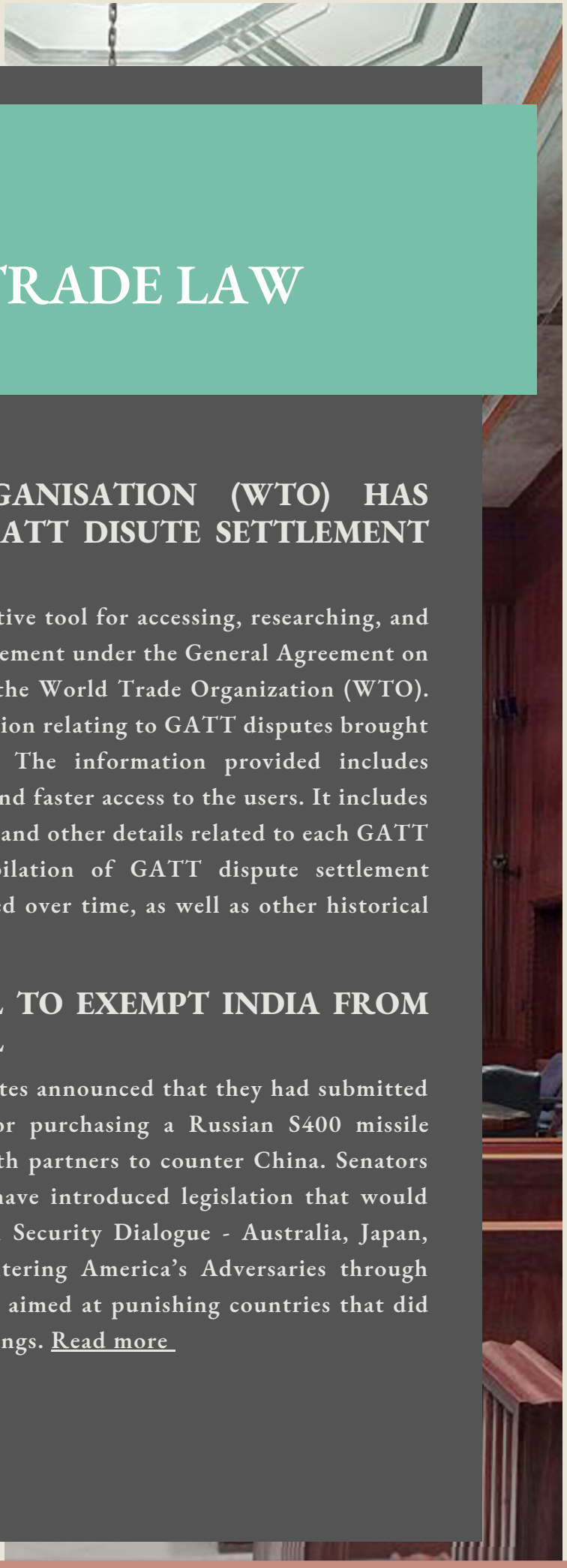
The two-day 'Train the Trainer' event, held in association with the United Kingdom's Foreign Commonwealth and Development Office (FCDO), was meant to train the trainers on 'Usage of Alternate Dispute Resolution Techniques to aid the Insolvency Resolution Process'. The training programme was held online on October 22 and 23, Ministry of Corporate Affairs affirmed in a statement. The 'Train the Trainer' programme focused on capacity building and development of the insolvency regime in India to the next level, the Ministry said. As part of the initiative, participants were provided with in-depth practical training and extensively covered the areas related to changing the way to look at disputes, efficacy of mediation techniques and merits of soft evaluation, etc. Read More



3. LIMITATION PERIOD FOR APPEAL UNDER SECTION 61 IBC STARTS RUNNING FROM DATE OF PRONOUNCEMENT; DELAY IN UPLOADING WON'T EXCLUDE LIMITATION: SC

The hon'ble Supreme Court in the case of V. Nagarajan v. SKS Ispat and Power Ltd, held that the period of limitation for initiating an appeal against an order as per Section 61 of the Insolvency and Bankruptcy Code will start running as soon as the same is pronounced, and that doesn't rely on the date when the order is uploaded. Ergo, a party who failed to file an application for the certified copy of the order immediately cannot raise a plea to extend the period of limitation on the ground of delay in uploading the order. The Court held that period awaiting the receipt of a free certified copy does not extend the limitation period under Section 61(2) of the IBC for a party who has not applied for the same. The Court held that a diligent litigant is expected to apply for the certified copy immediately. The act of filing an application for a certified copy is not just a technical requirement for computation of limitation but also an indication of the diligence of the aggrieved party in pursuing the litigation in a timely fashion. Read More

By Akshat Verma, Assistant Editor



NEWS UPDATES

INTERNATIONAL TRADE LAW

1. THE WORLD TRADE ORGANISATION (WTO) HAS LAUNCHED AN INTERACTIVE GATT DISUTE SETTLEMENT DATABASE

The new GATT Disputes database is an interactive tool for accessing, researching, and visualising detailed information on dispute settlement under the General Agreement on Tariffs and Trade (GATT), the predecessor of the World Trade Organization (WTO). The database allows users to search for information relating to GATT disputes brought by contracting parties from 1948 to 1995. The information provided includes significant documents which would allow easy and faster access to the users. It includes a one-page overview of important dates, papers, and other details related to each GATT case. The resources section includes a compilation of GATT dispute settlement procedures, which shows how they have changed over time, as well as other historical GATT materials. Read more

2. SENATORS IN US FILES A BILL TO EXEMPT INDIA FROM SANCTIONS OVER RUSSIAN DEAL

Three Republican senators from the United States announced that they had submitted legislation exempting India from sanctions for purchasing a Russian S400 missile defense system, noting the need of working with partners to counter China. Senators Ted Cruz, Todd Young, and Roger Marshall have introduced legislation that would exempt member countries of the Quadrilateral Security Dialogue - Australia, Japan, and India - from sanctions imposed by Countering America's Adversaries through Sanctions Act (CAATSA), a sweeping 2017 law aimed at punishing countries that did business with Russia's military, among other things. Read more

3. WORLD LEADERS MAKE SEVERAL COMMITMENTS AS G20 ROME SUMMIT ENDS

The G20 Summit in Rome ended on Sunday with the adoption of a declaration reaffirming the crucial role of multilateralism and international cooperation in overcoming the global challenges arising from the Covid-19 pandemic. The "G20 Rome Leaders' Declaration" pledges to strengthen the common response to the pandemic and pave the way for a global recovery, with particular concern for the most vulnerable. The leaders of the world's major economies have pledged to use all available tools to address the consequences of the pandemic, sustain the recovery and remain vigilant to global challenges such as supply chain disruption. Highlighting the essential role of vaccines in the fight against the pandemic, they vowed to advance efforts to ensure timely, equitable and universal access to safe, affordable, quality and effective vaccines, therapeutics and diagnostics, with particular regard to the needs of low- and middle-income countries. Read more

4. THE GLOBAL RECOVERY IS CONTINUING, BUT PACE HAS SLOWED AND UNCERTAINITY HAS GROWN: WORLD ECONOMIC OUTLOOK 2021

The global economic recovery is continuing, even as the pandemic resurges. The fault lines opened up by COVID-19 are looking more persistent—near-term divergences are expected to leave lasting imprints on medium-term performance. Vaccine access and early policy support are the principal drivers of the gaps. The global economy is projected to grow 5.9 percent in 2021 and 4.9 percent in 2022, 0.1 percentage point lower for 2021 than in the July forecast. The downward revision for 2021 reflects a downgrade for advanced economies—in part due to supply disruptions—and for low-income developing countries, largely due to worsening pandemic dynamics. This is partially offset by stronger near-term prospects among some commodity-exporting emerging market and developing economies. Rapid spread of Delta and the threat of new variants have increased uncertainty about how quickly the pandemic can be overcome. Policy choices have become more difficult, with limited room to manoeuvre. Read more

By Shashwat Sharma, Assistant Editor

NEWS UPDATES

INTELLECTUAL PROPERTY RIGHTS (IPR)

1. INTENT OF FOREIGN DEFENDANTS TO TARGET INDIAN CUSTOMERS MUST BE ESTABLISHED IN INTERNET TRADEMARK INFRINGEMENTS: DELHI HC

In Tata Sons Private Limited v. Hakunamatata Tata Founders & Ors, the High Court of Delhi stated that in case of internet trademark infringements, the overt intent of foreign seated defendants to target Indian customers and market must be established. The Court observed that there was no evidence that the plaintiff's webpage had been accessed from India. The mere fact that the defendants' cryptocurrency could be purchased by customers located in India and that, as a result, the plaintiff's brand value may be diluted cannot justify the interference of the Court with the defendants' activities. The Court observed that the defendants were located outside the sovereign borders of India and were statutorily outside the ambit of the Trade Marks Act, 1999 and the Code of Civil Procedure, 1908 and thus, declined the prayer of Tata Sons for a permanent injunction. **Read more**

2. GOOGLE CANNOT ABSOLVE ITSELF FROM LIABILITY OF ENSURING THAT KEYWORD IS NOT AN INFRINGEMENT OF TRADEMARK: DELHI HIGH COURT

In M/S Drs Logistics (P) Ltd & Anr. v. Google India Pvt Ltd & Ors., the Delhi High Court observed that Google cannot absolve itself from the liability of ensuring that a keyword is not an infringement of the trademark. The Court noted that allowing individuals who are not trademark owners to choose a trademarked phrase as a keyword or utilize elements of the brand intermingled with generic words in the Ad-title or Ad-text may constitute trademark infringement or passing off. The Court stated that trademark infringement can occur through spoken use of the mark that differs from printed or visual representations of the mark, as well as through invisible use of the mark. The Court thus concluded that using a trademark as keyword amounts to use as provided under the Trade Marks Act,1999. **Read more**

3. CHINA ISSUES 15-YEAR PLAN FOR IPR PROTECTION, WITH LEGISLATION TO COVER BIG DATA, AI

The Central Committee of the Communist Party of China and the State Council have released a strategy for 2021-2035 to promote the development and protection of intellectual property rights (IPRs) by expediting IPR legislation in new technologies, industries, business models, and models, such as big data, AI, algorithms, and genetic technology. The country has pledged to play a significant role in global intellectual property governance. In addition, the country will formulate and update legislation to increase the protection of corporate secrets, improve the legal system for regulating IPR abuse, and reform legislation on monopoly practices and unfair competition using IPRs. China will accelerate the cultivation of several exceptional new plant varieties with IPRs and increase the quality of licensed varieties in terms of Biological Breeding. **Read more**

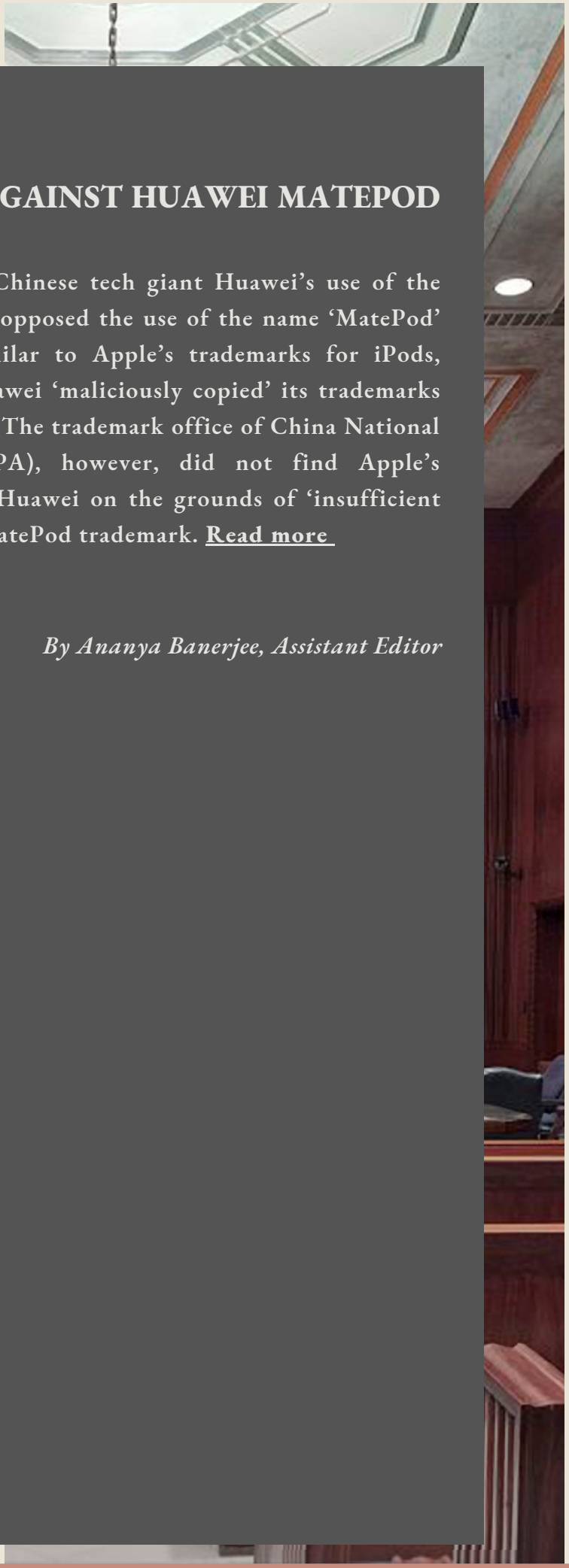
4. DELHI HIGH COURT PROPOSES DRAFT INTELLECTUAL PROPERTY RIGHTS DIVISION RULES, 2021

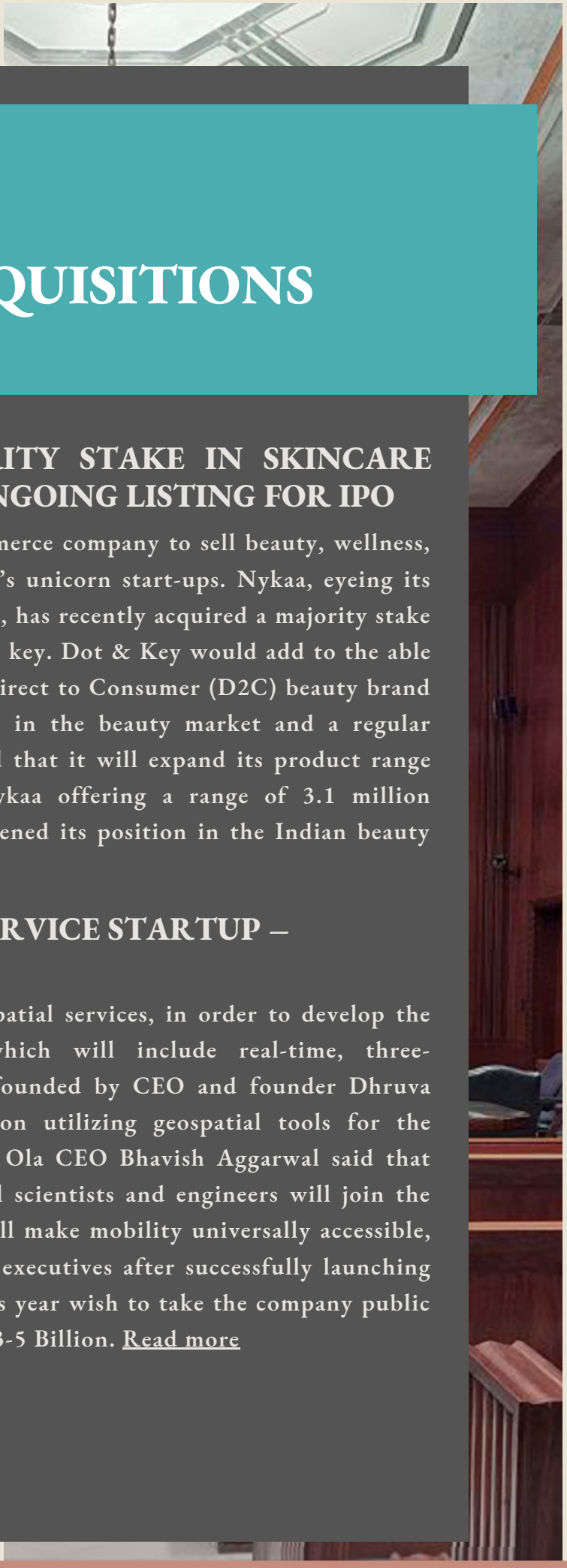
On 8th October 2021, the Delhi High Court published the Draft Delhi High Court Intellectual Property Rights Division (DHC-IPD) Rules 2021, and invited suggestions from the Bar within two weeks. The Draft Rules, framed on the recommendations of the committee chaired by Chief Justice DN Patel, contain 31 Rules and two Schedules. Additionally, they also recommend the formation of a panel of experts and law researchers to aid and assist the court in various matters, and inclusion of new techniques for evidence-recording (such as hot-tubbing), etc. **Read more**

5. APPLE LOSES LEGAL BATTLE AGAINST HUAWEI MATEPOD TRADEMARK

Apple lost a legal battle seeking to restrain Chinese tech giant Huawei's use of the name 'MatePod' for its earbuds device. Apple opposed the use of the name 'MatePod' by Huawei on the grounds that it was similar to Apple's trademarks for iPods, EarPods, and AirPods. Apple argued that Huawei 'maliciously copied' its trademarks which could have a negative impact on society. The trademark office of China National Intellectual Property Administration (CNIPA), however, did not find Apple's argument compelling and ruled in favour of Huawei on the grounds of 'insufficient evidence'. Huawei has thus been granted the MatePod trademark. **Read more**

By Ananya Banerjee, Assistant Editor





NEWS UPDATES

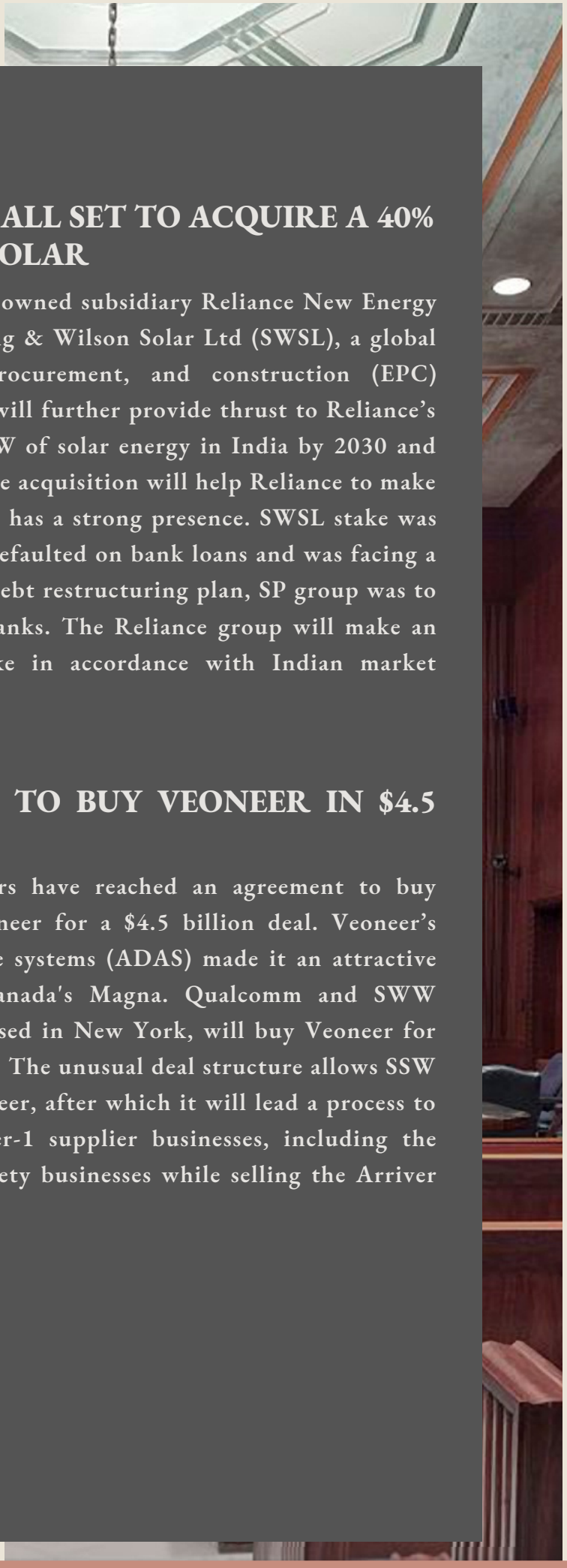
MERGERS AND ACQUISITIONS

1. NYKAA ACQUIRES A MAJORITY STAKE IN SKINCARE BRAND DOT & KEY AMID THE ONGOING LISTING FOR IPO

Nykaa, founded by Falguni Nayar as an e-commerce company to sell beauty, wellness, and fashion products has become one of India's unicorn start-ups. Nykaa, eyeing its IPO valuation in billions by the end of October, has recently acquired a majority stake of 51% in a home-grown skincare brand, Dot & key. Dot & Key would add to the able fleet of stable brands, and would be the first Direct to Consumer (D2C) beauty brand acquired by Nykaa. With Nykaa's stronghold in the beauty market and a regular consumer base, Dot & Key executives affirmed that it will expand its product range and quality standards with Nykaa. With Nykaa offering a range of 3.1 million products, this acquisition has further strengthened its position in the Indian beauty and personal care market. Read more

2. OLA ACQUIRES GEOSPATIAL SERVICE STARTUP – GEOSPOC

Ola has acquired GeoSpoc, a provider of geospatial services, in order to develop the next generation of location technology, which will include real-time, three-dimensional, and vector maps. GeoSpoc was founded by CEO and founder Dhruva Rajan in 2014 as a company that focused on utilizing geospatial tools for the betterment of the Indian Business Ecosystem. Ola CEO Bhavish Aggarwal said that CEO Dhruva Rajan and his team of geospatial scientists and engineers will join the ride-hailing business to build solutions that will make mobility universally accessible, sustainable, personalized, and convenient. Ola executives after successfully launching its electric scooter and having bumper sales this year wish to take the company public early next year eyeing its valuation at around $ 3-5 Billion. Read more

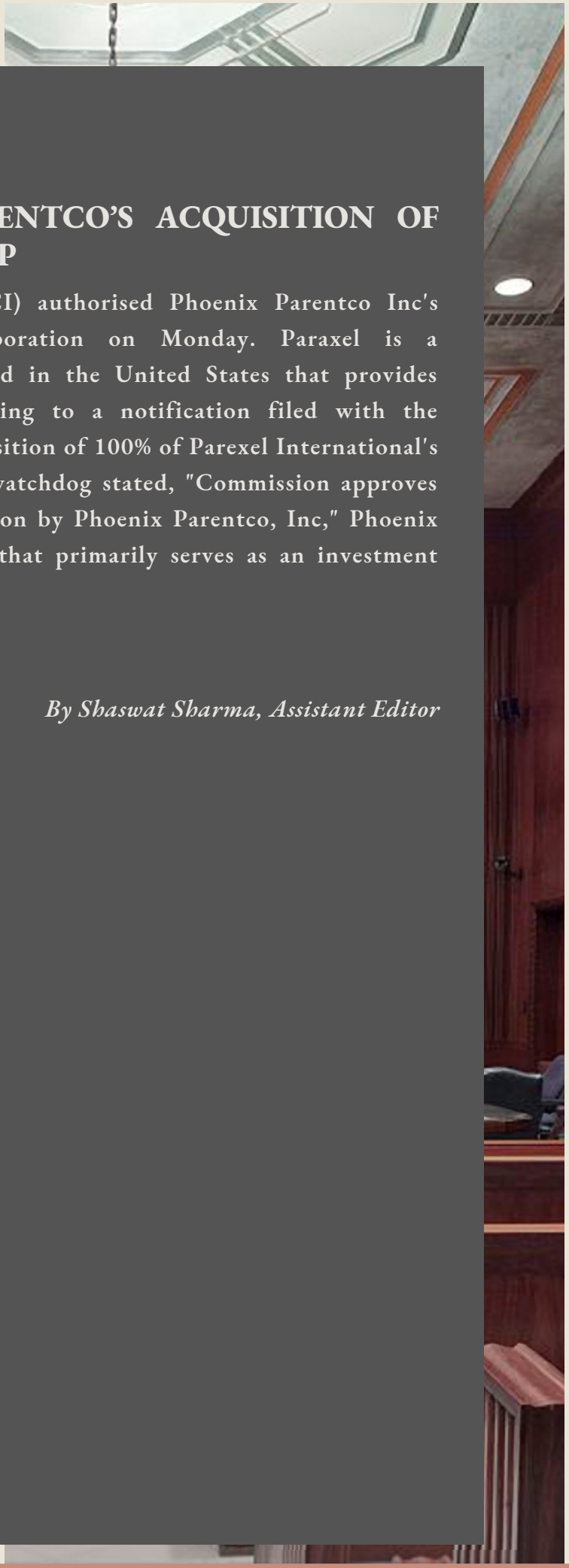


3. RELIANCE INDUSTRIES LTD IS ALL SET TO ACQUIRE A 40% STAKE IN STERLING & WILSON SOLAR

Reliance Industries announced that its wholly-owned subsidiary Reliance New Energy Solar Ltd will buy a 40% investment in Sterling & Wilson Solar Ltd (SWSL), a global pure-play, end-to-end solar engineering, procurement, and construction (EPC) solutions provider (RNESL). This acquisition will further provide thrust to Reliance's ambition to establish and enable up to 100 GW of solar energy in India by 2030 and become a global player in renewable energy. The acquisition will help Reliance to make inroads into Middle East markets where SWSL has a strong presence. SWSL stake was on sale after the Singapore Power (SP) group defaulted on bank loans and was facing a severe liquidity crisis. As part of its one-time debt restructuring plan, SP group was to sell assets and utilize the proceeds to repay banks. The Reliance group will make an open offer to acquire a further 25.9% stake in accordance with Indian market regulations, Reliance said. Read more

4. QUALCOMM, SSW PARTNERS TO BUY VEONEER IN $4.5 BILLION DEAL

Chipmaker Qualcomm Inc. and SSW partners have reached an agreement to buy Swedish automotive technological group Veoneer for a $4.5 billion deal. Veoneer's expertise in making advanced driver assistance systems (ADAS) made it an attractive takeover target for both Qualcomm and Canada's Magna. Qualcomm and SWW Partners, a newly-founded investment firm based in New York, will buy Veoneer for $37 per share in cash, Veoneer's statement said. The unusual deal structure allows SSW Partners to buy all outstanding shares of Veoneer, after which it will lead a process to look for a strategic buyer for Veoneer's Tier-1 supplier businesses, including the restraint control systems (RCS) and active safety businesses while selling the Arriver business to Qualcomm. Read more



5. CCI CLEARS PHOENIX PARENTCO'S ACQUISITION OF PAREXEL INTERNATIONAL CORP

The Competition Commission of India (CCI) authorised Phoenix Parentco Inc's acquisition of Parexel International Corporation on Monday. Paraxel is a biopharmaceutical outsourcing company based in the United States that provides services to biopharmaceutical firms. According to a notification filed with the regulator, the proposed deal involves the acquisition of 100% of Parexel International's equity holdings. In a tweet on Monday, the watchdog stated, "Commission approves acquisition of Parexel International Corporation by Phoenix Parentco, Inc," Phoenix Parentco is a one-of-a-kind financial vehicle that primarily serves as an investment holding company. Read more

By Shaswat Sharma, Assistant Editor

NEWS UPDATES

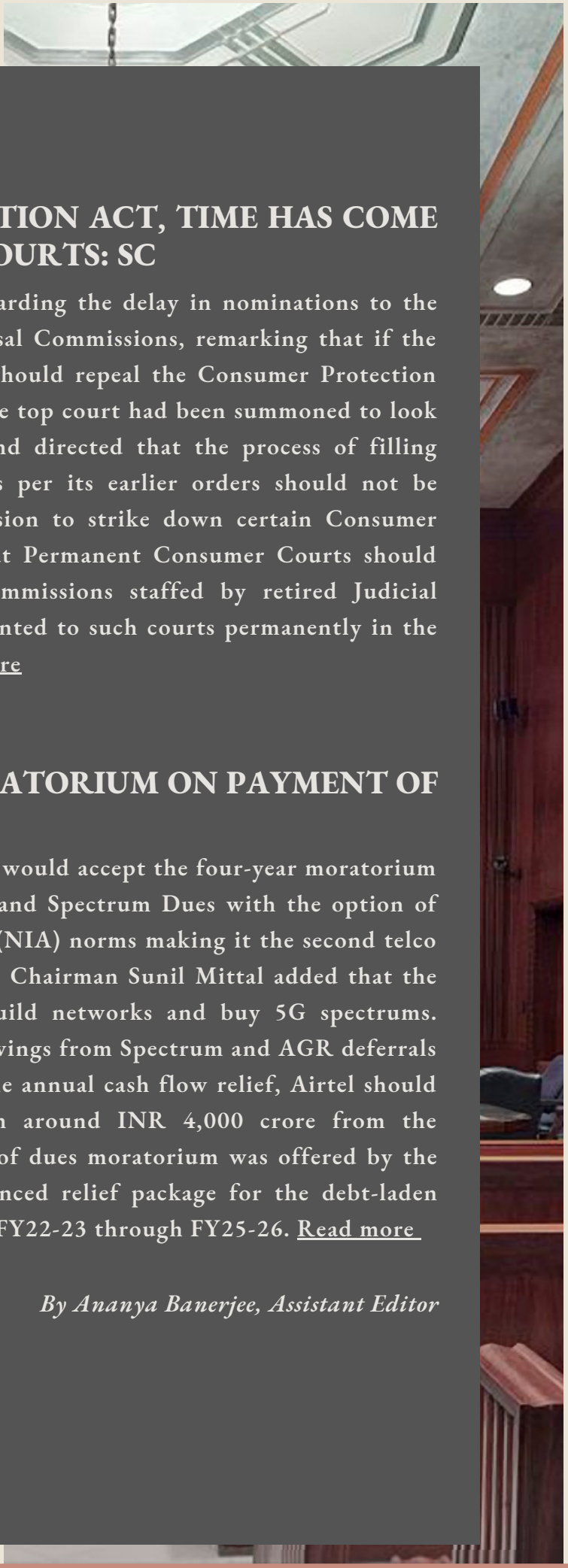
MISCELLANEOUS

1. COMPANY ENTITLED TO ACQUIRE PROPERTIES DEHORS CANCELLATION OF ITS REGISTRATION AS NBFC: KERALA HIGH COURT

In M/s Sree Sankara Funds Ltd v. Tahsildar (Land) & Ors, the Hon'ble High Court of Kerala ruled that even if an entity's Non-Banking Financial Company (NBFC) license is revoked, it can continue to buy, own, and hold legal properties, as well as operate as a company and a legal person, as long as its Certificate of Registration (CoR) is not revoked under the Companies Act, 2013. The Court stated that CoR as an NBFC is different from the CoR as a company after examining Section 45- IA(6) of the Companies Act that provides for cancellation of a CoR. The Court added further that revocation of NBFC license would not result in the entity losing the opportunity to continue the proceedings under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002. Read more

2. RBI EXEMPTS BORROWERS WITH LESS THAN RS 5-CRORE BANK LOANS FROM AMBIT OF CURRENT ACCOUNTS CIRCULAR

The Reserve Bank of India (RBI) has relaxed Current Account rules for bank exposures of less than Rs 5 crore, allowing lenders to open Current Accounts, Cash Credit, and Overdraft Facilities without restriction. The regulator has given banks one month to implement the adjustments. According to the banking regulator, banks are also allowed to open and retain inter-bank accounts, any accounts with organizations such as EXIM Bank, NABARD, NHB, and SIDBI, and accounts attached by Central or State Government and investigation authorities without any restrictions. By regulating an already over-regulated sector, the RBI's new guidelines aim to discipline current account usage to efficiently monitor cash flows and control siphoning of funds. Borrowers with exposure greater than Rs 5 crore, on the other hand, will maintain Current Accounts with any of the banks with which they have Cash Credit or Overdraft Facilities, as long as the bank has at least 10% of the banking system's exposure to that borrower. Read more



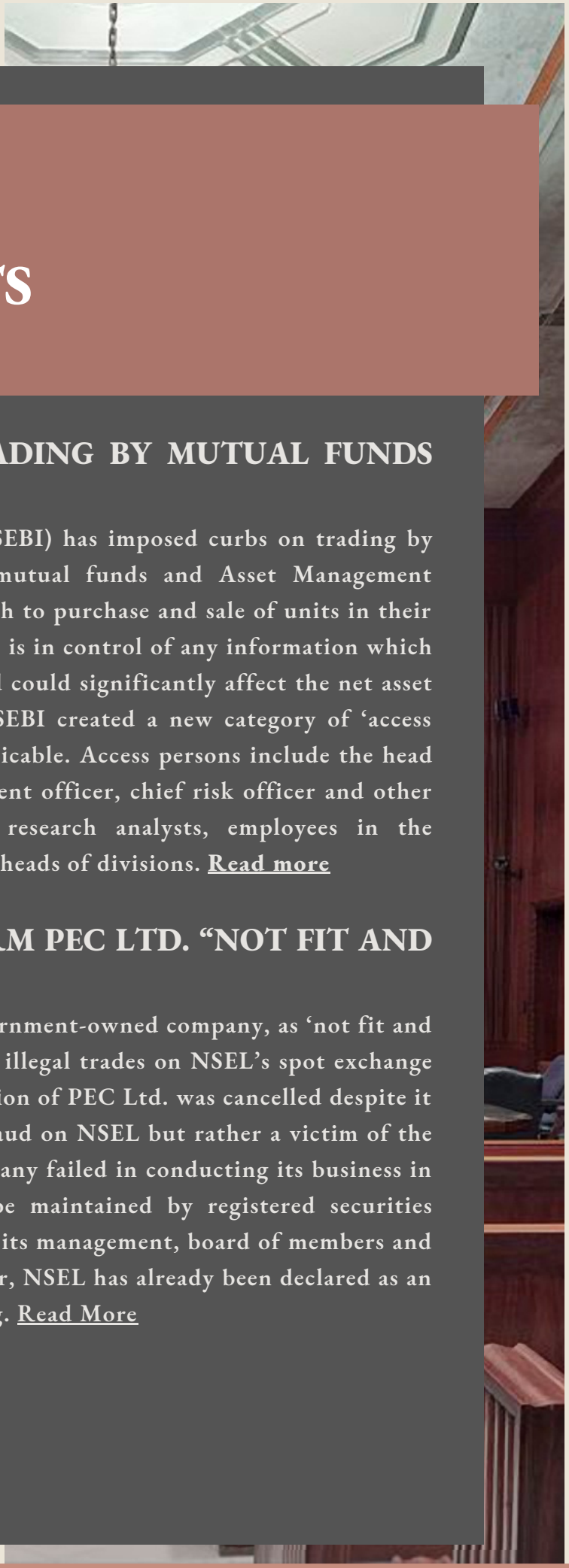
3. ABOLISH CONSUMER PROTECTION ACT, TIME HAS COME FOR PERMANENT CONSUMER COURTS: SC

The Supreme Court expressed its concern regarding the delay in nominations to the District and State Consumer Disputes Redressal Commissions, remarking that if the Government does not want the tribunals, it should repeal the Consumer Protection Act. The Court said it was unfortunate that the top court had been summoned to look into how vacancies in tribunals are filled, and directed that the process of filling vacancies in State Consumer Commissions as per its earlier orders should not be hampered by the Bombay High Court's decision to strike down certain Consumer Protection Rules. The Court further said that Permanent Consumer Courts should take over the role of ad-hoc Consumer Commissions staffed by retired Judicial Officers. Furthermore, Judges should be appointed to such courts permanently in the same manner as the District Judiciary. Read more

4. AIRTEL ACCEPTS 4-YEAR MORATORIUM ON PAYMENT OF AGR, SPECTRUM DUES

Bharti Airtel informed the Government that it would accept the four-year moratorium on Adjusted Gross Revenue (AGR) payments and Spectrum Dues with the option of pre-paying as per Notice Inviting Application (NIA) norms making it the second telco after Vodafone Idea to accept the offer. Airtel Chairman Sunil Mittal added that the company would redirect the cash flow to build networks and buy 5G spectrums. According to analysts, for Airtel, the annual savings from Spectrum and AGR deferrals would be around INR 11,000 crore. Besides the annual cash flow relief, Airtel should also get back Bank Guarantees (BGs) worth around INR 4,000 crore from the Department of Telecom (DoT). The proposal of dues moratorium was offered by the Union Cabinet as part of the recently-announced relief package for the debt-laden Telecom sector in the middle of September for FY22-23 through FY25-26. Read more

By Ananya Banerjee, Assistant Editor



NEWS UPDATES

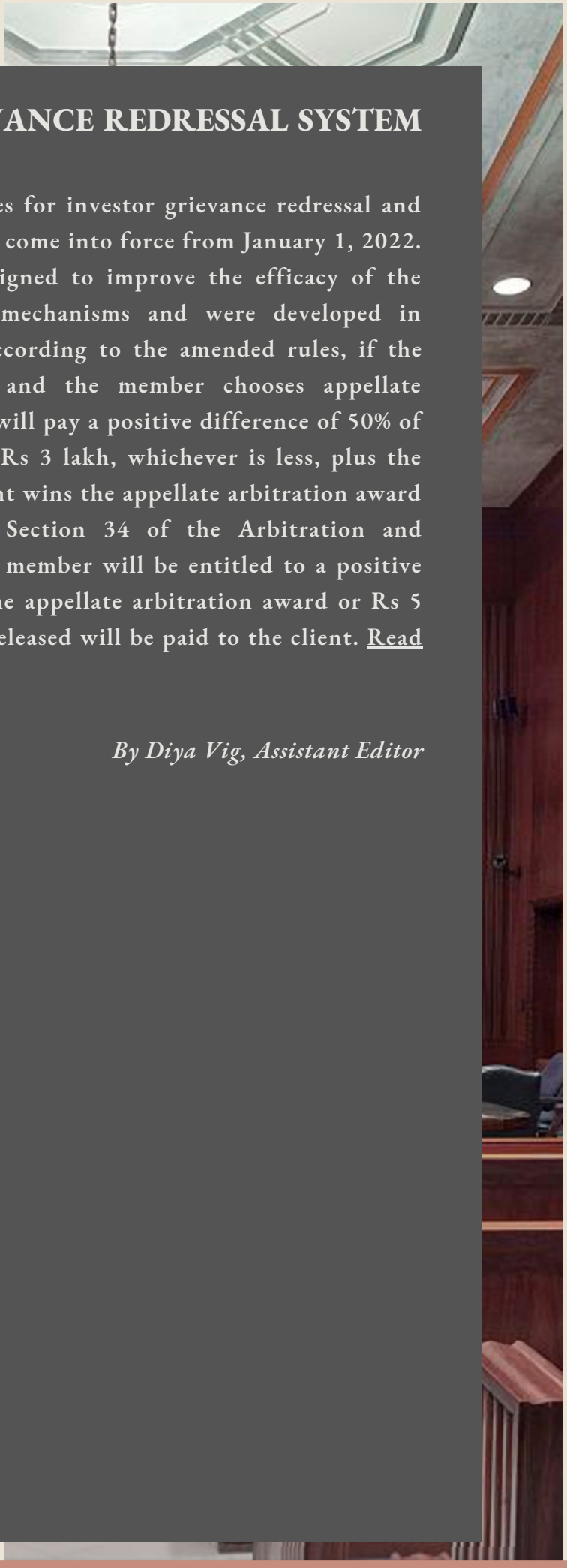
SECURITIES RIGHTS

1. SEBI IMPOSES CURBS ON TRADING BY MUTUAL FUNDS EMPLOYEES

The Securities and Exchange Board of India (SEBI) has imposed curbs on trading by board members, trustees and employees of mutual funds and Asset Management Companies (AMCs). The restrictions also stretch to purchase and sale of units in their own mutual fund scheme(s) where the employee is in control of any information which has not been communicated to unit holders and could significantly affect the net asset value (NAV) or the interest of unit holders. SEBI created a new category of 'access persons' on whom the restrictions shall be applicable. Access persons include the head of the AMC, executive directors, chief investment officer, chief risk officer and other C-suite executives, fund managers, dealers, research analysts, employees in the operations department, compliance officer, and heads of divisions. **Read more**

2. SEBI DEEMS GOVT. OWNED FIRM PEC LTD. "NOT FIT AND PROPER", CANCELS LICENSE

SEBI has declared PEC Ltd, a 100 per cent government-owned company, as 'not fit and proper' for acting as a broker and carrying out illegal trades on NSEL's spot exchange platform between 2010 and 2013. The registration of PEC Ltd. was cancelled despite it pleading that it was not party to the alleged fraud on NSEL but rather a victim of the same. SEBI remarked in its order that the company failed in conducting its business in conformity with the standards expected to be maintained by registered securities market intermediaries. SEBI studied the role of its management, board of members and promoters before deeming the company. Further, NSEL has already been declared as an illegal exchange, on which PEC Ltd. was trading. Read More



3. SEBI AMENDS INVESTOR GRIEVANCE REDRESSAL SYSTEM AND ARBITRATION MECHANISM

SEBI has amended the framework and guidelines for investor grievance redressal and arbitration mechanism. The new framework will come into force from January 1, 2022. The modifications, according to SEBI, are designed to improve the efficacy of the investor grievance redressal and arbitration mechanisms and were developed in response to feedback from stock exchanges. According to the amended rules, if the arbitration award is in the client's favour and the member chooses appellate arbitration, the Investor Protection Fund (IPF) will pay a positive difference of 50% of the amount stated in the arbitration award or Rs 3 lakh, whichever is less, plus the amount already released to the client. If the client wins the appellate arbitration award and the member files an application under Section 34 of the Arbitration and Conciliation Act, 1996 to have it set aside, the member will be entitled to a positive difference of 75% of the amount specified in the appellate arbitration award or Rs 5 lakh, whichever is less and the amount already released will be paid to the client. Read more

By Diya Vig, Assistant Editor

NEWS UPDATES

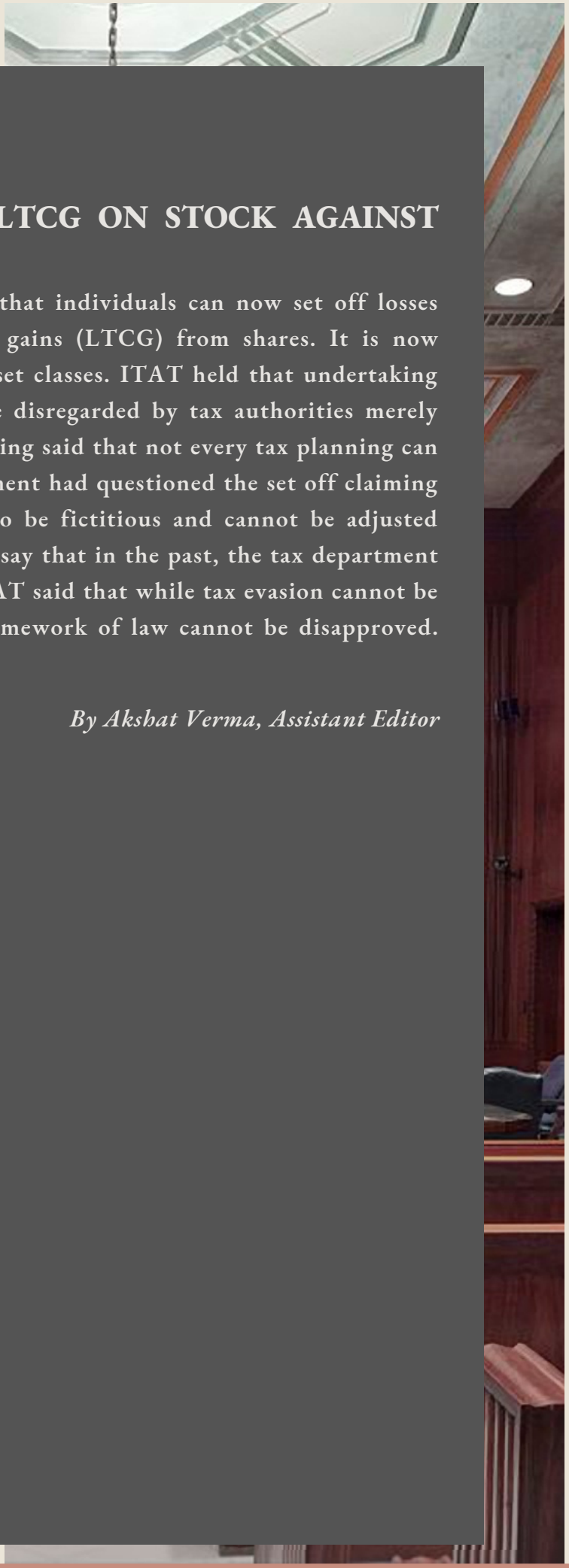
TAXATION LAW

!. CBDT EXPANDS SCOPE OF INFORMATION INCLUDED IN FORM 26AS

The Central Board of Direct Taxes (CBDT) on October 26 notified an order under Section 285BB of the I-T Act expanding the scope of information reported in new Form 26AS. The Income tax department has expanded the list of high-value financial transactions which would be available to taxpayers in their form 26AS by including details of mutual fund (MF) purchases, foreign remittances, as well as information in ITRs of other taxpayers. Form 26AS is an annual consolidated tax statement that can be accessed from the income-tax website by taxpayers using their Permanent Account Number (PAN). Additional information prescribed includes foreign remittance made by any person through an authorised dealer, breakup of the salary with deductions claimed by the employee, information in ITR of other taxpayers, interest on Income Tax Refund, information published in statement of financial transactions. Read More

2. GOVERNMENT NOTIFIES NEW RULES TO CLEAR THE VODAFONE RETRO TAX CONUNDRUM

The Central Board of Direct Taxes on October 13, 2021 notified fresh rules to facilitate settlement of the retrospective tax dispute with British telecom company, Vodafone. The notified rules are called 'Relaxation of Validation (section 119 of the finance act) Rules, 2021'. They prescribe the forms and conditions for the declaration to be filed by the company for settling its case. Under the rules, the government affirmed refunding any tax collected. However, the refund would not include any interest and would be subject to companies agreeing to withdraw all pending legal proceedings. Companies are also required to indemnify the government against any future claims and promise to not seek any damage. The Companies will have 45 days to file their application to settle their tax dispute and would have to furnish a declaration to the I-T department, withdrawing all legal proceedings against the government over the levy of retrospective taxes. Read More



3. INDIVIDUALS CAN SET OFF LTCG ON STOCK AGAINST REAL ESTATE DEALS: ITAT

Income Tax Appellate Tribunal (ITAT) held that individuals can now set off losses from property sale against long-term capital gains (LTCG) from shares. It is now perfectly legal to set off tax liability across asset classes. ITAT held that undertaking tax planning is "not illegal" and shouldn't be disregarded by tax authorities merely because it's beneficial to the taxpayers. The ruling said that not every tax planning can be construed as tax avoidance. The tax department had questioned the set off claiming that the sale of shares "prima facie appears to be fictitious and cannot be adjusted against any taxable income." Industry trackers say that in the past, the tax department has questioned several similar transactions. ITAT said that while tax evasion cannot be glorified, genuine tax planning within the framework of law cannot be disapproved. **Read more.**

By Akshat Verma, Assistant Editor

NEWS UPDATES

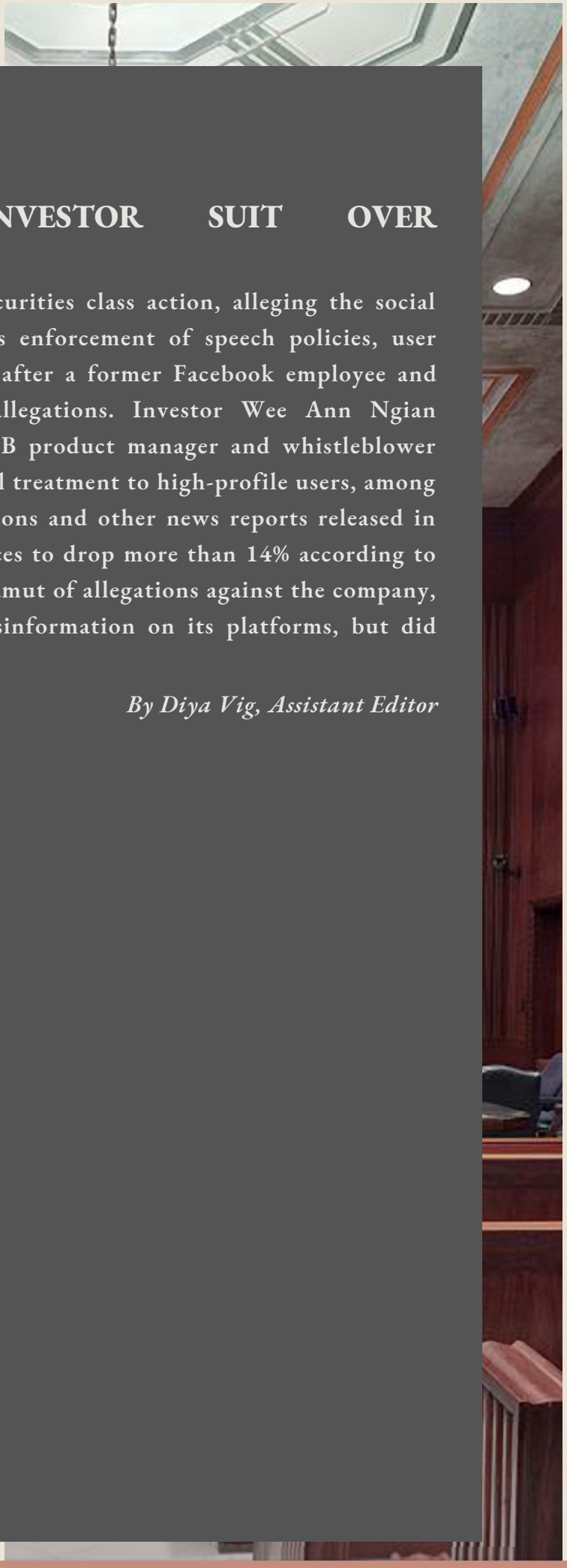
TMT LAW

1. JIO REFUSES AGR MORATORIUM, 4-YEAR SPECTRUM

Reliance Jio has refused the government's moratorium on spectrum and adjusted gross revenue (AGR) payments, becoming the only telecommunication to do so. Jio's refusal comes at a time when both market rivals Vodafone Idea and Bharti Airtel have accepted the moratoriums. Jio has responded to a telecom relief package which included the 4-year moratorium on AGR and spectrum payments, sharply reducing the option to convert statutory dues to government equity. Recently, Jio had paid Rs. 10,792 Crores to the Department of Telecommunications (DoT), clearing all dues towards spectrum bought in the auctions held in 2016. However, it has not yet cleared all dues of spectrum bought in 2014 and 2015 auctions, which is about Rs 15,000-Rs 16,000 Crores, including interests. Read More

2. KARNATAKA NOTIFIES LAW BANNING ONLINE BETTING GAMES

The Karnataka Government notified a new law banning online betting games after making amendments to Karnataka Police Act, 1963. The law bans online games that are "games of chance" in nature. The Karnataka Police (Amendment) Bill, 2021 was passed by the legislature despite a similar law — the Tamil Nadu Gambling and Police Laws (Amendment) Act, 2021 — passed in February in Tamil Nadu being struck down by the Madras High Court this August as being ultra vires. As per the law, games means and includes online games, involving all forms of wagering or betting, including in the form of tokens valued in terms of the money paid before or after the issue of it, or electronic means and virtual currency, electronic transfer of funds in connection with any game of chance. The new Karnataka legislation attempts to reinforce the Karnataka Police Act by making gambling a cognizable and non-bailable offence, as well as "curbing the threat of gaming over the Internet and mobile applications." Read more



3. FACEBOOK FACES INVESTOR SUIT OVER WHISTLEBLOWER CLAIMS

A Facebook Inc. investor filed a proposed securities class action, alleging the social media behemoth purposely misrepresented its enforcement of speech policies, user growth and other metrics. This comes weeks after a former Facebook employee and whistleblower came forward with similar allegations. Investor Wee Ann Ngian highlighted recent accusations from former FB product manager and whistleblower Frances Haugen that Facebook gave preferential treatment to high-profile users, among other questionable practices. Haugen's allegations and other news reports released in recent months caused the company's share prices to drop more than 14% according to Ngian's suit. The SEC complaints included a gamut of allegations against the company, including that FB knew of the spread of misinformation on its platforms, but did almost nothing to stop it. Read more

By Diya Vig, Assistant Editor

EDITORIAL COLUMN

THE "HEAVY HAND" OF CCI: ANALYZING THE RECENT IMPOSITION OF FINE ON THE BEER CARTEL

By Talin Bhardwaj (Senior Editor) and Raghav Sehgal (Copy Editor)

1. INTRODUCTION

In recent times, the increasing presence of many multinational companies working in multifarious sectors, has led to a significant rise in instances of abuse of dominance and anti-competitive practices in India. In this context, the Competition Commission of India ("CCI"), the chief national competition regulator in India has been designated with the responsibility of curbing these anti-competitive practices and ensuring that markets are functioning in a manner that is conducive to the interests of the consumers. In order to ensure the objective of curbing anti-competitive conduct, the CCI scrutinizes various activities of companies such as inter alia market combinations, bid rigging, and cartelization, by imposing fines/penalties to deter the companies from engaging in such activities.

Recently, the CCI imposed a hefty penalty of Rs. 873 Crore on Carlsberg, UBL, All India Brewers' Association (AIBA), and eleven individuals for cartelization in the sale and supply of beer. This has been regarded as a landmark move by the CCI as it imposed the record penalty against activities pertaining to cartelisation. Cartels are essentially agreements between sellers or between suppliers in a supply chain to not compete but instead collude to the detriment of their customers. In the present case, the association/companies were found to be engaged in a cartel leading to the imposition of a hefty penalty. This article shall provide a brief insight into the background of the case, the CCI's decision and the impact that this decision is likely to have on the enforcement against activities of cartelisation.

2. AN INSIGHT INTO THE BACKGROUND OF THE CASE

The present order of CCI comes nearly four years pursuant to the detailed probe that was ordered by the CCI regarding these anti-competitive practices. On October 31, 2017, the CCI passed an order whereby, it opined that the conduct of the above-mentioned associations/companies and individuals prima facie appears to be in contravention of the provisions of Section 3(1) read with Section 3(3)(a) of the Competition Act, 2002 concerning penalization and prohibition of anticompetitive agreements. Consequently, the Commission directed the Director General ("DG") to cause an investigation into the matter.

The DG noted that the sale of the liquor does not fall within the ambit of the Goods and Services Tax (GST) and as such, each State/Union Territory in India has its unique method of regulating the sale of liquor within its territory, leading to many differences, including differences in pricing regulations, approvals, imposition of taxes, excise duties and terms of licensing. Based on the investigation's findings, the DG observed that the parties exchanged critical information regarding pricing and other confidential and business-sensitive information amongst themselves. These companies subsequently approached state governments jointly through the AIBA in order to obtain price adjustments to agreed-upon levels in order to prevent any form of price wars amongst themselves.

3. FINDINGS AND DECISION OF THE CCI

In its official release based on the findings of the DG during search and seizures conducted as part of the investigation, the CCI stated that these leading companies have been found to be indulging in cartelization in the sale and supply of beer in various States, and Union Territories in India, through the platform of AIBA. The CCI has also found that the companies engaged in price coordination in Andhra Pradesh, Karnataka, Maharashtra, Odisha, Rajasthan, West Bengal, Delhi, and Puducherry, and restricted the supply of beer in Maharashtra, Odisha, and West Bengal. The CCI also discovered that key managerial personnel emailed competitors about any increase in the prices that they planned to submit to state authorities in several states. Further, there was coordination between UBL and Anheuser Busch InBev India (AB InBev) about the acquisition of second-hand bottles. Based on these findings, the CCI held four individuals from UBL, four individuals from AB InBev, six individuals from Carlsberg, and the Director-General of AIBA responsible for their respective companies' anti-competitive behaviour, contravening the provisions of Section 3(3)(a) read with Section 3(1) of the Act and hence fines were imposed. The fines on UBL and Carlsberg India are approximately Rs 752 crore and Rs 121 crore, respectively. A fine of over Rs 6.25 lakh was imposed on AIBA and various other individuals were also fined.

4. CONCLUSION

Cartels are dealt with seriously by competition regulators around the world. The European Commission (“EC”) has strict regulations for the imposition of fine, which are calculated in proportion to the duration of the cartelisation, and considering the advantage that the companies have gained through the sale of the products in that duration. With increased collaborations amongst companies, it is not uncommon now to find cartels involving operating across national boundaries. There is a consensus on the need to formulate and implement severe anti-cartel enforcement policy, with quantifiable penalties, similar to the model of the EC. In the present case, the firms were engaged in price coordination, restriction of the supply of beer, and coordination regarding the supply of beer to premium institutions in several Indian states contravening the provisions of competition law. The above-mentioned imposition of fine is an instance of the CCI taking a step in the right direction towards deterring cartelisation amongst companies. Therefore, there is a need to act in furtherance of this decision and continue building the regulatory frameworks regarding an anti-cartel policy for abolishing and preventing these anticompetitive practices. This shall not only ensure consumer welfare but also a level playing field for Indian businesses and industrialists.

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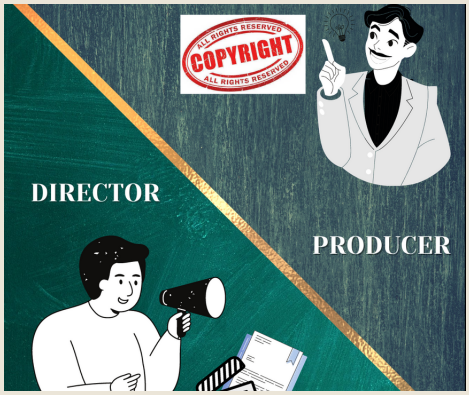
DIRECTOR'S CUT: A NEGLECTED COPY-RIGHT



This guest post under the RFMLR Blog Series on Evolving Landscape of Intellectual Property Rights is authored by Ms. Gunjan Arora (Assistant Professor and Head, Centre for IPR, Institute of Law, Nirma University (ILNU), Ahmedabad) and Vedant Saxena (student at Rajiv Gandhi National University of Law, Punjab).

1. INTRODUCTION

"The law of copyright rests on a very clear principle: that anyone who by his or her own skill and labour creates an original work of whatever character shall, for a limited period, enjoy an exclusive right to copy that work. No one else may, for a season, reap what the copyright owner has sown."

- Lord Bingham of Cornhill in Designers Guild Ltd v Russell Williams (Textiles) Ltd 2001

The excerpt from the judgement quoted above delineates the very basis of copyright law- to give what is rightly due to a person who invests his own labour and efforts in creating an original work. Hence, the one who advances an original piece of work that has not been in existence previously, must be endowed with rights and interests as the author of the work. This is the Natural Law Rights theory that underlies the grant of copyrights. On similar lines, this article seeks to vouch for Authorship rights for the Director of a Film, who in most cases is merely granted benefits under the contract with the producer. There are no economic benefits per se, under the Copyright Law, that the Director is provided with in comparison to the proportion of his/her contribution to the making of the film.

The legal principles at present, however, seek to distinguish between the Owner and the Author of an original work and in most cases, these two are different entities who are recognised and endowed with all rights incidental to Copyrights. The Copyright Laws across different jurisdictions, including India, differentiate between an owner and an author of a copyright work. The latter shall be deemed to waive all economic rights under the law if he/she creates an original piece of work while being hired by a person who has commissioned the author to create the work in return for payment of consideration under a contract. This being the general principle is subject to clause contrary to it under a contract. It is this distinction that is also brought in a Film making process, where technically it is considered that the Producer, being the investor in the film, hires all the other contributors, including the Director of the

RECENT ON THE BLOG

e film. If we may refer the Indian provisions on Authorship and Ownership under Section 17 read with Section 14 (v) of the Copyright Act, 1957, the position is even more intricate in the case of a Film Director, as under the Law, he is not considered as the Author in the first place. Hence, the problem with the law at present is that the Director seems to attain no place or status under the Copyright Law as far as the rights of an Author are concerned.

The debate pertaining to the distinction between Owner and Author becomes increasingly material in cases where it may be difficult to identify the distinguished contributions of the owner and the author for a specific work, as is in the case of cinematographic works, which by their very nature, are a collaborative phenomenon of all the various performing artists and authors involved. This collaborative synthesis may be instilled by striking the right balance and fairly negotiating the various rights and remuneration of all those involved in the film-making process. 1The law recognises the producer as the owner and author of the work, whereas the Director of the film may merely be assigned joint authorship under the terms of the contract at the discretion of the producer.

The present article hereby seeks to find answers to the questions on rights of the Director under the Copyright Law as his contributions are no less original and creative in so far as the film is concerned. Therefore, considering the very premise on which the Copyright Law in general is based, giving what is due to the Director of a film as an Author is the central argument of this piece.

2. FILM: AN OUTCOME OF THE DIRECTOR'S INTELLECTUAL LABOUR

A film is a collection of a variety of elements including production, screenplay, sound recordings and music, the performance of various artists and actors, and the art of direction. Proper documentation of the chain of titles, assignment and transfer of all rights involved determines the ownership rights of the producer of the film.

The process of filmmaking involves various different stages including the development of the idea and plot of the film, pre-production, production, post-production, and film distribution and promotion. The idea for the film may either come from the scriptwriter to the proposed director of the film or in some cases it may be the director himself who reaches out to a scriptwriter based on the plot of the film story that he has planned for. In the pre-production and production stage, the director starts looking for a promising financier who is willing to invest in the filmmaking process.

Filmmaking is an art that is mastered by a director who ideates, imagines, creates and brings to screen his thoughts and perceptions on a specific subject. As a filmmaker, there is a challenge to tell the story with one's own vision, using one's own creativity and intelligence. From choosing the angle of the camera to editing the screenplay, guiding the cast and crew for the film throughout the process, a filmmaker (Director) is the one who controls the creative aspects of a film. Hence, his role is indispensable. A film is rather a reflection of the thoughts of a director and mirrors his perception of the society.

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An important theory underlying copyright is the Personhood Theory- a work created by the author is a reflection of his personality. Imbibing the underlying principles of the Personhood Theory to the Film making process helps us recognize the fact that a film is reflective of the director's artistic vision, and therefore, just like in the case of any other artistic creation, the director should be granted the rights associated with authorship. The main argument of this theory is that as a director plays a decisive role in the making of a film, and therefore, the final product is the result of his skill and labour, he must be endowed with the benefits as an Author under the Copyright Law. Some of the very famous filmmakers, including the Late Yash Chopra, Subhash Ghai, Sanjay Bhansali, Aashutosh Gowarikar & Imtiaz Ali among others, are widely identified by the audience with the nature of the films they make and cinematography fineness that each of them exhibits. A grant of status of Authorship to the Director shall further strengthen his position as against the producer of the film and grant him/her more powers in so far as negotiating the terms and conditions pertaining to distribution and promotion of the film are concerned. This theory influenced many European states in giving due credit to the efforts of the director. In states such as in United Kingdom4 and France,5 the director is now recognized as a joint-author and co-author of the film respectively, and therefore, he is entitled to the royalties accrued from the ownership rights.

3. ECONOMIC RECOGNITION

Having understood the contribution of a director to the process of filmmaking, moral and economic recognition, and attribution of credit is what becomes a legitimate expectation. As far as the Indian Film Industry is concerned, a term in a contractual agreement between the Producer and the Director gets to decide the remuneration which the director may get post the release of the film. This again, to a large extent, is dependent on the Box Office success ratio that the film manages to obtain. In so far as the legal provisions under the Copyright Law are concerned, for the purposes of a Cinematograph film, the producer is deemed as the author and owner of the work created for all intents and purposes. This in fact is ironic, as the term "work and originality" in copyright means and includes creations that come directly from the author, i.e., the one who creates the work. However, surprisingly, it is the producer, i.e., the financier for a cinematograph film who is considered the author and owner of the work. Further, it is the 'work for hire' principle that governs the legal relationship between a producer and the director of a film. Of course, this may not be a relevant discussion in cases where the director and the producer are the same person, but it becomes important when we talk of directors who are self-made and are new to the industry. According to Section 2(d)(v) of the Indian Copyright Act, 1957, the producer of a film is considered the author as well. This is on account of the WMFH (Work Made for Hire) doctrine, according to which the essential crew members such as the directors, actors and set designers do not own any part of the final product. All ownership rights vest in the studio that hired them. 6Whenever there is a dispute regarding the rightful authorship of a film, the producers usually contend that the director is paid a handsome amount by virtue of the WMFH agreement. While this fact cannot be denied, however, it must be noted that the amount paid to the directors is negligible as compared to the profits enjoyed by the producers by way of distribution rights, selling of broadcasting rights and satellite rights, online releases, etc.

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The 2010 Copyright Amendment Bill 7 sought to bring into place the provision on Joint Authorship of films. However, the same was rejected on the presumption that this would undermine the role of the Producer and rather there may be situations where the Producer might himself become the Director instead of hiring one as this would lead to division of rights under authorship and ownership of copyrights. The refusal on these grounds doesn't seem like a convincing argument as in recent times, there are varied actors and directors who assign the producer status to either themselves or someone from their family itself keeping in view the budgetary constraints. A positive move towards granting authorship rights to the Director may rather undermine the powers of the Producer, who until now enjoyed the perks of being in a position of employing his influence upon the other contributors, merely because the ownership rested in him. In Sartaj Singh Pannu v Gurbani Media Pvt Ltd., while the Hon'ble Delhi High Court failed to provide relief to the director-petitioner on account of the lack of statutory support, it addressed the indispensable need for granting authorship to directors, considering the amount of creativity they invest in making the film.

4. CONCLUDING REMARKS

The intellectual creations of a director are not something that the law protects. In fact, this is an age-old practice since the Statute of Anne, which sought to give copyrights to the Publisher and Printer of a book- ideally the financier. Cinematography is an art that is learnt over the years by a director. The fact that there are Training Schools and Institutes across the world that impart learnings on cinematography proves that this is a skill that may be learned and expertise may be acquired over time.

The USA provides for copyright to choreography, which too is considered as a skill and art. Drawing an analogy here, we may say that the same principle must also govern the grant of copyrights to cinematography and hence, it is the director who must be considered as an Author and Owner of the work, or at least be granted Joint Authorship with the producer.

CALL FOR COMMENTS

1. THE SEBI HAS RELEASED A FORMAT FOR SUBMISSION OF PUBLIC COMMENTS FOR THE CIRCULAR ON CONSOLIDATION OF AND RE-ASSURANCE OF DEBT SECURITIES

The Securities and Exchange Board of India (SEBI) vide circulars dated June 30, 2017 and March 28, 2018 on consolidation and re-issuance of debt securities ("ISIN circulars"), provided specifics related to International Securities Identification Number (ISINs) for corporate bonds. Issuers have clarified that fixing a ceiling on ISINs and reissuing bonds in the same ISIN have helped them in better projection of cash flow requirements and thus enabling them to effectively carry out their Asset Liability Management (ALM) requirements.

Given that issuers are presently not making full use of even half number of the maximum ISINs allocated to them, it is felt that further putting a ceiling on ISINs will not only reduce the fragmentation across the bond market and enhance liquidity premium but also help both issuers and investors alike. Considering the implications of the said matter on the market participants including the issuers, public comments are invited. The comments by the public have to be submitted via a form and should be mailed to kirand@sebi.gov.in, chaitalik@sebi.gov.in or pradeepr@sebi.gov.in , latest by 21 November, 2021. Read More

CALL FOR COMMENTS

2. CENTRE INVITES FEEDBACK AND COMMENTS ON THE DRAFT MEDIATION BILL, 2021

The Department of Legal Affairs under the Ministry of Law and Justice invites comments and suggestions from all stakeholders on the Draft Mediation Bill, 2021 through a circular dated 5th November 2021.

The Bill aims to facilitate mediation in the country, particularly institutional mediation for the resolution of disputes, encourage community mediation, and make online mediation an acceptable and cost-effective process. The Bill proposes to bring about a standalone law on mediation and also takes into contemplation the international practice of using the terms 'conciliation' and 'mediation' interchangeably as India is a signatory to the Singapore Convention on Mediation. The Bill provides for the establishment of the Mediation Council of India for the registration of mediators who must be guided by the principles of objectivity & fairness and protect the confidentiality and self-determination of the parties. The draft Bill proposes for pre-litigation mediation and at the same time safeguards the interest of the litigants to approach the competent adjudicatory forums/courts in case of urgency. Further, the successful outcome of mediation in the form of a Mediation Settlement Agreement (MSA) has been made enforceable by law. Since the MSA is out of the consensual agreement between the parties, the challenge to the same has been permitted on limited grounds.

Comments and suggestions on the above Draft Bill have been invited from stakeholders and the same may be sent by E-mail to parijat.diwan@nic.in or by mail to the postal address. Read more.

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