RFM
Law Review

AU COURANT

MARCH 2021

RGNUL FINANCIAL AND MERCANTILE LAW REVIEW

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RFM Law Review

PREFACE

We are delighted to share with our readers the March Edition of Au Courant.

Au Courant is the flagship monthly newsletter of the RGNUL Financial and Mercantile Law Review (RFMLR). A comprehensive collection of contemporary news updates and analytical pieces, it seeks to keep its readers up to date with various happenings and changing legal trends in the financial and corporate sectors.

In this edition, the current on-goings in various fields of law have been analyzed succinctly in the 'Highlights' section to provide readers some food for thought. With the highlights, we hope to both inform readers and pique their interest in issues of high contemporary relevance. In the March edition, the new guidelines for the Business Continuity Plan and Disaster Recovery of Market Infrastructure Institutions issued by SEBI have been analyzed. Supreme Court's recent ruling putting an end to the Tata-Mistry corporate feud has been discussed. The section also highlights the mounting data security and biometric privacy breach cases against the video-sharing app, TikTok.

The 'News Updates' section provides a monthly round-up of the happenings in various fields of laws such as arbitration, competition, International Trade Law, securities, taxation, intellectual property, and technology, media & telecommunication to keep the readers abreast of the latest legal developments.

The March edition also features an interview with Mr. Prasanth Sugathan, Legal Director, Software Freedom Law Centre, India where the queries regarding the controversial aspects of the new Information Technology (Guidelines for Intermediaries and Digital Media Ethics Code) Rules, 2021 have been addressed and their repercussions for social media intermediaries are discussed.

Further, 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 Draft Motor Vehicles (Registration and Functions of Vehicle Scrapping Facility) Rules, 2021 by the Ministry of Road Transport and Highways and the Consultation Paper on Review of Regulatory Provisions related to Independent Directors released by the Securities & Exchange Board of India.

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

HIGHLIGHTS

NEW RULES FOR MARKET INFRASTRUCTURE INSTITUTIONS: DEALING WITH GLITCHES

The Securities and Exchange Board of India (SEBI) has come out with new guidelines for the Business Continuity Plan (BCP) and Disaster Recovery (DR) of Market Infrastructure Institutions (MIIs), which include stock exchanges, clearing corporations and depositories. In a circular dated 22nd March 2021, SEBI stated that "with advancement in technology and improved automation of processes, it was felt that the extant framework needs to be re-examined with a view to reducing the time period specified for moving from Primary Data Centre (PDC) to Disaster Recovery Site (DRS)."

SEBI has defined 'Critical Systems' for an Exchange/ Clearing Corporation to include Trading, Risk Management, Collateral Management, Clearing and Settlement and Index computation, while 'Critical Systems' for a Depository include systems supporting settlement process and inter-depository transfer system. In case of any disruption of any one or more of the 'Critical Systems', the MII has to declare that incident as a 'Disaster' within 30 minutes of the incident. Additionally, it is supposed to take measures to restore operations including from DRS within 45 minutes of the declaration of the 'Disaster'.

Therefore, the Recovery Time Objective (RTO), i.e., the maximum time taken to restore operations of 'Critical Systems' from DRS after declaration of Disaster, will be 45 minutes. It is also the duty of the MIIs to ensure that the Recovery Point Objective (RPO), the maximum tolerable period for which data might be lost due to a major incident, is 15 minutes. Further, 'live' trading sessions from the DR site need to be scheduled for at least two consecutive days every six months.

The new framework, which has to be implemented within 90 days from the date of the circular, has been released against the backdrop of a technical glitch at the National Stock Exchange (NSE) on February 24 that caused NSE to be shut down and trading to be halted for nearly four hours.

SUPREME COURT UPHOLDS TATA SONS' DECISION TO SACK CYRUS MISTRY AS CHAIRMAN

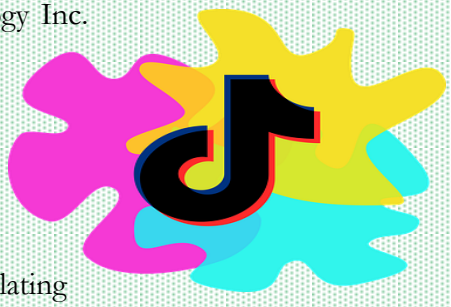
The Supreme Court (SC) on Friday accepted all of Tata Group's appeals and approved the company's decision to fire Cyrus Pallonji Mistry as chairman and executive officer. The decision puts an end to one of the most bitter corporate board battles in corporate India's history. A three-judge bench headed by Chief Justice S.A. Bobde set aside the 2019 order of the National Company Law Appellate Tribunal (NCLAT) that restored Mistry to his post and allowed all the appeals by Tata Group.

The SC also stated that it would not go into the specifics of the fee to be paid or rule on whether or not Tata Group should use Article 75 of its Articles of Association. The question of assessing the worth of the Mistry family's 18.4 per cent interest in Tata Sons has been left to the parties, enabling them to seek legal action if they so choose. The court also ruled that there was no persecution of Tata Group minority shareholders or malfeasance at Tata Sons.

The board of Tata Sons removed Mistry from his role as Chairman in 2016. Mistry, who was once a protégé of Tata Sons Chairman Emeritus Ratan Tata, was fired as both Executive Chairman and Director of the company. Following his dismissal, he filed a complaint with the National Company Law Tribunal (NCLT) in Mumbai, alleging that Tata Sons' controlling shareholder, the Tata Corporation, was oppressing the group's minority shareholders.

The NCLT upheld Mistry's dismissal as Executive Chairman and Director in a 2017 ruling, stating that only because Tata Sons' board of directors held a board meeting on short notice or included the item agenda (removing Mistry from his top position) at the last minute, it could not be called a fraud. The SC concluding the judgement said that the value of SP group shares would be determined by the valuation of Tata Sons' equities and that the Supreme Court will not decide what a reasonable value should be.

BIOMETRIC PRIVACY BREACH BY TIKTOK INC



TikTok Inc. (TikTok) and its parent company, ByteDance Technology Inc. (ByteDance) have landed in trouble for allegedly breaching the state biometric privacy law in Illinois. The applications used facial recognition software in user videos, as well as algorithms to identify age, gender, and ethnicity. In the ongoing multidistrict litigation in the Northern District of Illinois, the application has been accused of violating the Illinois Biometric Information Privacy Act (BIPA). It was also alleged that TikTok users are never asked for consent to collect, capture, receive, obtain, store, and/or use their biometric information.

The plaintiffs claimed that TikTok is violating the BIPA. The law mandates companies to obtain written releases from people before collecting scans of "face geometry" and other biometric data. Under BIPA, a private entity cannot collect, capture, purchase, receive through trade, or otherwise obtain a person's biometric identifier or biometric information without informing the subject in writing that a biometric identifier or biometric information is being collected or stored. The specific objective and duration for which data is being collected need to be informed to the subject in writing.

TikTok has agreed to pay $92 million to settle the lawsuit accusing it of misusing artificial intelligence. Previously other big tech companies such as Google, Vimeo, and Clearview AI have also faced the music for compiling biometric information databases. As a social platform that caters mostly to a younger demographic, TikTok has unknowingly jeopardized the privacy of minors and its dismissive approach to U.S. privacy laws is being rightly criticized.

INTERVIEW WITH MR. PRASANTH SUGATHAN

MR. PRASANTH SUGATHAN

(Legal Director, Software Freedom Law Center)

Prasanth Sugathan is a lawyer with extensive practise in the fields of intellectual property law, technology law, constitutional law and administrative law. He has worked for years with the Free Software community in India. An engineer-turned lawyer, he has appeared in various cases before the Supreme Court of India, High Courts and Tribunals.

He has researched well and developed an informed understanding of issues related to Net Neutrality and Information Technology.

1. Government of India introduced the new Information Technology (Guidelines for Intermediaries and Digital Media Ethics Code) Rules, 2021 last month which require applications like WhatsApp, Telegram, Signal to enable tracing the origin of flagged messages and break end-to-end encryption. What are your initial thoughts about these rules?

Rule 4(2) of the Rules is an amended version of the previous draft Intermediary Guidelines which was published in December, 2018. This provision requires a significant social media intermediary providing services primarily in the nature of messaging to identify "first originator" of the information on a computer resource. In order to acquire such information, the Rules require an order issued under Section 69 of IT Act or a judicial order. The provision is problematic in several quarters.

Firstly, it is an either/or situation for a judicial order and an order under S. 69, IT Act. Section 69 does not offer adequate procedural safeguards and the orders under S. 69 are not available in the public domain. RTI requests filed by SFLC.IN seeking the number of decryption orders passed by the government each year have been denied in the past, citing S. 8 of the RTI Act, 2005. Law enforcement agencies can easily bypass the judicial process by relying on decryption requests made under S. 69 of the IT Act, 2000, thereby undermining accountability and transparency principles.

Secondly, the provision provides that where the first originator of any information on the computer resource of an intermediary is located outside the territory of India, the first originator of that information within the territory of India shall be deemed to be the first originator of the information. In such a scenario, the intermediary should have access to the metadata of the entire chain of the conversation. So, the messaging applications have to be re-engineered to capture metadata to implement this mandatory requirement. This provision will undermine end-to-end encryption and will severely impinge on security and privacy of communications. This is because in order to comply with the traceability provision, there is a high likelihood that the significant social media intermediaries will have to break end-to-end encryption and access the contents of a message, thereby compromising the privacy of communication. This will considerably weaken security of end-to-end encrypted platforms. This move would severely dent the privacy by design principle by acting both ways i.e. being a valuable target for malicious third parties.

In addition to this, it would still pose a major challenge in courts to prove who the originator of information is. For instance, someone who took a screenshot of a tweet and shared it with a friend, may not be the actual originator of that information. It would potentially be a challenge in the court to attribute mens rea to such originators.

In a nutshell, this provision will undermine privacy and right to free speech, and it will severely impact the sanctity of end-to-end encrypted communications.

2. What are your thoughts upon the new framework in terms of how these entities will now have to equip themselves? And will this framework be same for the foreign news media?

(Details of the above question, if required)

Within the next three months, such platforms will have to appoint a resident as:

Chief Compliance Officer who will be responsible and liable for ensuring compliance with the Information Technology Act and rules.

- **Nodal Contact Person for 24x7 coordination with law enforcement agencies.**
- **Resident Grievance Officer to address user complaints.**
- **Such platforms will need to have a physical address in India.**

They'll also have to publish a monthly compliance report mentioning the details of complaints received and action taken, as well as details of contents removed proactively.

a) The new framework under the rules burdens the companies with multiple sets of compliances which add financial and operational burdens, diminish the ease of doing business in India and create an environment of uncertainty in terms of consequences of non-compliance or non-adherence with the guidelines.

b) The requirement for having a physical address in India creates an operational and financial burden, especially on smaller companies.

c) In the context of appointment of personnel, the platforms will have a difficult time finding an employee who would be keen and willing to take up such a responsibility and at the same time ensure that during the course of his/her employment, the company functions flawlessly to protect him/her from any legal liability for the actions or omissions of the company.

d) (The response to compliance reports given in the next question)

e) Applicability of the framework to foreign News Media - Rule 8(2) states that the rules shall be applicable to a "Publisher" which "operates in the territory of India" or "conducts systematic business activity of making its content available in India". The rule makes it amply clear that the regulatory framework in the rules would also be applicable to foreign news media.

3. What is your opinion about the compliance requirement for Significant Social Media Intermediaries, especially the "monthly compliance report"? Don't you think that it is a bit impracticable?

The obligation in respect of publication of a monthly compliance report is a step in the right direction. This would facilitate transparency and accountability from social media companies which have so far not been answerable in terms of their content moderation decisions. Availability of more data in the public domain would also ensure cooperation and collaboration between social media giants and it would also help smaller companies (which are not as well equipped in terms of resources) learn and make better decisions, and implement better technological tools. Instead of making it monthly, the obligation should be modified to publish it quarterly or once in six months, to make the compliance process easier for companies.

4. Both for Social Media Intermediaries and Significant Social Media Intermediaries the rules say that they shall endeavour to deploy tech tools to identify content related to rape, sexual, child abuse and doing so measures should account for free speech and expression as well as privacy of the users. Don't you think that too much of an onus is put upon the players?

Rule 4(4) talks about the obligation upon significant social media intermediaries (SSMI) to deploy technology-based measures to identify harmful content. The rule uses the phrase "shall endeavour to deploy technology-based measures". The rule puts an obligation upon SSMI to identify certain undesirable categories of information, using automated tools on a best-efforts basis.

The first proviso to the said rule states that the measures taken by the intermediary shall be proportionate and shall have regards to free speech and expression and privacy of users.

Technological tools for proactive filtering or monitoring of content have been in use by social media intermediaries for a while now. There are some serious problems with these automated tools and sometimes intermediaries end up taking down content that is harmless. While a lot of these tools lack the subjectivity, which is necessary to make a fair decision in respect of identification or removal of such content, the sheer volume of information that is hosted upon social media intermediaries on a daily basis, and the potential harm that certain categories of these information can cause, necessitates that automated tools and other technological tools are implemented to make the internet a safe place for its users.

Facebook and other companies have had some success with using AI to find problematic content, but it has been limited and unreliable. Currently, no AI that is available on the market is trained well enough to understand the eccentricities of human speech, context, slangs, dialect, satire or puns. As consumers of social media will know, most of problematic content is about context.

In the terms of respecting the sensitivities of free speech, it will take a while for automated filters to reach a satisfactory threshold.

Companies now should start taking more responsibility for third party content. This is because the algorithms that decide what content is kept and what content is removed, is often biased in favour of content that is more popular and which is possibly more profitable for social media companies.

Social media companies are therefore no longer mere conduits which host content and therefore they should take up more responsibility for the information they host.

5. What are your opinions upon the small market players? Is it possible for them to adhere to such compliances or do they need to re-invent their complete business model?

The rules make it more difficult for small market players. Intermediaries which operate in multiple countries would now be burdened with additional costs for maintaining an office and hiring employees in India. This will alter the business structure and operations of smaller companies. There are a number of such companies which usually operate with across multiple jurisdictions with ease, and some compliances under the rules will be an undue hindrance for such companies. Coupled with the added financial costs, fearing harassment or imposition of unwarranted legal liability, some entities may even choose to opt out of doing business in India.

6. The new rules have thrown up concerns related to encryption policies of messaging platforms. The new guidelines enunciate that if a messaging platform, has some prescribed number of registered users in India, it will have to enable identification of the first originator of the information. Do you believe that the new rules affect the fundamental right to freedom of speech and expression and pose privacy concerns for internet users?

Answer to question 6 has been addressed in question 1.

7. The new rule empowers the Information & Broadcasting Secretary to directly block specific content for public access, in case of an emergency. The third-tier redressal mechanism is also dealt with by the government. Moreover, the ministry will take the final call on the complaint that has been filed. Do you think that so much consolidation of power in the hands of government is right?

The Rules give overarching powers to the I&B Ministry in terms of adjudication of OTT as well as online news content. Any oversight mechanism should have a judicial body at the top and not an executive body. Giving the power to the executive to decide what content gets aired and what content gets blocked, is bound to have a chilling effect on the right to freedom of speech and expression. The ministry has not only been bestowed with the power to refer grievances to the inter-departmental committee constituted by it but it also has been given the power to issue guidance and advisories to publishers. The said committee can also send recommendations to the ministry for

warning, censuring, admonishing or reprimanding an entity. This gives way to an undesirable situation where freedom of speech and the freedom of press will be at the mercy of the government or its agencies.

8. Rules are still under consideration by the Court, and the outcome is quite at a distance. So, can you please elaborate a bit upon what companies should start looking at and doing, to adhere to these guidelines now?

A couple of petitions are pending before the High Court and the Supreme Court, which challenge various provisions of the rules. Unless a company receives an interim order from a court where it is stated otherwise, it has a statutory obligation to comply with the provisions of the rules, as and when it is applicable to it.

9. Recently, an agreement has been reached by Google with French news publishers, to pay them for use of online content. This has also fueled a demand for similar enabling laws to be enacted by the Parliament of India. What route, according to you, must the Indian government take while developing the same?

It is widely accepted that social media has now become a key source of news. It has also been observed that in various parts of the world, there has been a loss of media's advertising revenue to big tech firms. Market dominance of tech firms over media organizations does create a situation where there is an inequitable distribution of power between the two entities.

Generally speaking, in the context of regulating businesses, the principle should be that no entity should unjustly or unfairly be allowed to earn profits at the cost of another entity or should earn out of the hard work of another entity. Due regard and consideration must also be paid to globally accepted anti-trust/competition law standards.

In the Indian context, any deliberation on regulation should be undertaken after a thorough assessment of the following:

i. Revenue structures of big tech companies/digital platforms and media/news companies;

ii. Interrelationship and profit sharing between the aforementioned entities.

iii. Change in trends in (i) and (ii) over the past few years and a fair prediction of trends in the future.

After such an assessment if it is found that there is an imbalance of power, stakeholders should be encouraged to come to mutually agreeable terms for profit sharing on advertising and profit from news content. It is only when these solutions do not work should the government step in to regulate.

10. As internet intermediaries have grown to play an essential role in developing, disseminating, and amplifying harmful and illegal content such as fake news and terrorism-related content — the notion of total immunity to third party content no longer applies. How can we make sure that the internet remains as it is intended, a global entity which can be a relatively safe space for people to interact?

Intermediaries play a vital role in the digital economy. They contribute significantly in promotion of business, free flow of information and also facilitate a number of other transactions over the internet. Safe harbour protection grants immunity to intermediaries from being held liable in respect of third-party information which is hosted upon their platforms. Safe harbour protection is essential for intermediaries to be able to carry out their function without unwarranted hurdles and impediments. This is why most prospering economies around the world have robust safe harbour protection regimes in place.

For development of content moderation tools and practices, instead of working in silos, intermediaries must come up with technologies by clubbing together their research efforts and by learning from collaborative engagements. Intermediaries should also be more transparent and accountable in respect of their content moderation policies. Governments on the other hand, must find the right balance which facilitates an effective enforcement of laws and ensures the protection of rights and interest of all the stakeholders. It should be wary of overregulation and should always prioritize the protection of the right to free speech online.

NEWS UPDATES

Arbitration Law

The Amazon-Future Case And Arbitration Conundrum

A single bench of Justice JR Midha of the Delhi High Court in the high -profile Amazon-Future Case has held that the current legal framework recognizes emergency arbitration under the Arbitration and Conciliation Act, 1996 ('Arbitration Act'). Further, it was also held that an Emergency Arbitrator is an 'Arbitrator' for all intents and purposes of the Arbitration Act.

ICC Arbitration Rules 2021: Cleaner & Greener

The International Chamber of Commerce (ICC) has codified certain arbitral practices and refreshed its approach in the form of a new set of rules called the ICC Arbitration Rules, 2021. These new rules include some noteworthy amendments regarding multi-party arbitrations, third-party funders and the appointment of Arbitral Tribunal. The international fora consider it a step towards greater efficiency, flexibility, and transparency.

Parliament Gives Assent To Arbitration & Conciliation Bill, 2021

The bill to amend the existing arbitration law has been passed by Rajya Sabha in March. The bill will replace an ordinance issued on November 4, 2020, and seeks to ensure that all stakeholders get an opportunity to seek an unconditional stay on the enforcement of arbitral awards where the agreement or contract is "induced by fraud or corruption".

Competition Laws

CCI Directs Make My Trip And Go Ibibo To Allow FabHotels, Treebo To Be Listed On Its Online Portals

In an interim order passed on March 09, the Competition Commission of India (CCI) directed Make My Trip and Go Ibibo to allow FabHotels and Treebo to be listed on its online portals, after observing that such delisting affects competition in the market by denying access to important channel of distribution. The Commission was of the view that denial of access to a dominant online intermediation can be lethal to the functioning of businesses who rely on such intermediaries to reach the end-consumers. Read more

CCI Approves Tata Power-Nesco Deal

The Competition Commission of India (CCI) on March 19 has cleared Tata Power's proposed acquisition of a 51 per cent stake in

North Eastern Electricity Supply Company of Odisha Ltd. The proposed transaction relates to the purchase of 51 per cent in NESCO from GRIDCO. This is pursuant to the competitive bidding process initiated by the Odisha Electricity Regulatory Commission, as per a combination notice filed with the regulator. Read more

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Promoters Sell Additional 4.4% Stake In Indiabulls Real Estate

Promoters of the realty developer Indiabulls Real Estate have sold an additional 4.4% stake in the company through open market, making it a total of 7.5% stake. With this, the promoters group led by founder Sameer Gehlaut have trimmed their stake to 15.7%. The promoters of the company are reducing their stake ahead of the completion of its merger with Embassy Group, which has already received a nod from the CCI. Read more

Adar Poonawalla-Led Rising Sun Holdings Notifies Cci Of Magma Fincorp Deal

The Adar Poonawalla-led Rising Sun Holdings Pvt Ltd (RSHPL) has notified the Competition Commission of India (CCI) of its acquisition of a 60% stake in Magma Fincorp on March 04. The deal which involves the preferential allotment of shares worth Rs 3,206 crore, would give RSHPL a controlling stake in the non-banking financial company (NBFC). Read more

Insolvency Law

Person Ineligible U/S 29A Ibc To Submit Resolution Plan Cannot Propose Scheme Of Compromise & Arrangement U/S 230 Companies Act 2013

The Supreme Court, in a bench comprising of Justices DY Chandrachud and MR Shah, has upheld the constitutional validity of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 and held that a person who is ineligible under Section 29A of the Insolvency Bankruptcy Code to submit a resolution plan, cannot

propose a scheme of compromise and arrangement under Section 230 of the Companies Act, 2013. Read more.

NCLT Has Jurisdiction To Adjudicate Disputes Solely Relating To Insolvency Of Corporate Debtor

The Supreme Court has held that the National Company Law Tribunal (NCLT) has jurisdiction to adjudicate disputes which arise solely or relate to the insolvency of a corporate debtor. The top court, in a bench comprising of Justices DY Chandrachud and M R Shah, however, cautioned the NCLT and its appellate tribunal (NCLAT) to ensure that they do not usurp the legitimate jurisdiction of other courts, tribunals and forum when the dispute is not related to the insolvency of the Corporate Debtor. Read more

IBBI Issued Insolvency And Bankruptcy Board Of India (Insolvency Resolution Process For Corporate Persons) (Amendment) Regulations, 2021

The Insolvency and Bankruptcy Board of India (IBBI) on March 15, 2021, has issued the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Amendment) Regulations, 2021 to further amend the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. The following amendments have been made:

- Regulation 12A, which specifies the updation of a claim, has been inserted.
- Regulation 40B (1A), which specifies the filing of form CIRP 7, has been inserted.
- Form C, which specifies the submission of claim by financial creditors, has been substituted. Read more

Bankruptcy Court Admits Insolvency Plea Against Listed Beverage Firm Manpasand Beverages

The dedicated bankruptcy court has admitted the Corporate Insolvency Resolution Process (CIRP) against BSE-listed Manpasand Beverages Ltd. The Ahmedabad bench of the National Company Law Tribunal (NCLT) has appointed Arpan Maheshkumar Shah as the Interim Resolution Professional (IRP) for the company. The company has said in its stock exchange announcement on March 9 that as per Section 17 of the IBC, the powers of the Board of Directors of the Corporate Debtor stand suspended and such powers shall be vested with the IRP. Read more

International Trade Law

Necessary Documents For Import Of Denatured Ethyl Alcohol

The Directorate General of Foreign Trade (DGFT) has notified that in order to expedite the process for approval of authorization for import of Denatured Ethyl Alcohol (DEA), the applicants will have to submit additional documents and information such as imports and usage pattern of last five years indicating year-wise production of finished product and valid environmental clearance for each of the products being manufactured at the plant site. Read more

Import Authorization For 'Restricted' Items

As part of the IT Revamp of its exporter/importer related services, the Directorate General of Foreign Trade (DGFT) has introduced a new online module for filing of electronic, paperless applications for import authorizations with effect from 22.03.2021. All applicants seeking import authorization for restricted items may apply online from the DGFT website. Import authorizations for restricted items would be issued from DGFT HQ, Udyog Bhawan, New Delhi. Read more

Applications For Export Of Diagnostic Kits

The Directorate General of Foreign Trade (DGFT) has notified the procedure and eligibility criteria for submission of applications for export of diagnostic kits and their components/ laboratory reagents. It was provided that export of diagnostic kits is available as per leftover export quota and exporters were requested to apply for an export license by filing applications online through DGFT's ECOM system with specified documents for export authorizations. The validity of the export license will be only for 6 months. Read more

Online Module For Adjudication, Appeal, Review Proceedings

Through a trade notice, the Directorate General of Foreign Trade (DGFT) has implemented an online module for adjudication, appeal, review proceedings under Foreign Trade (Development and Regulation) Act, 1992 as amended and Foreign Trade (Regulations) Rules, 1993 as amended, with effect from February 27, 2021. The exporters need to submit the prescribed documents online through the official website of DGFT and are required to update the email address on DGFT Portal as all

correspondences shall be sent through mails only. Read more

Intellectual Property Rights

Bombay High Court Prohibits Commercial Use Of A Person's Image Without Consent

The Bombay High Court in its decision in the case of Sakshi Malik v. Venkateshwara Creations Pvt. Ltd. (Commercial IP Suit (L) No. 3510 Of 202) ordered Amazon Prime to remove the plaintiff's private image that was used for commercial purposes without her permission. The court issued an ad-interim injunction restraining the Defendants from publishing or broadcasting the film on any media outlet until the objected-to sequence containing the picture was immediately removed.

Alternate Reality Patent Suit Against Microsoft Dismissed

A lawsuit against Microsoft claiming that its alternate reality (AR) device HoloLens infringed on various 3D imaging patents, has been dismissed. The US District Court for the Middle District of Florida ruled that the lawsuit brought by D3D Technologies against Microsoft should be dismissed because it could not be proven that Microsoft was aware of its indirect infringement of the patents at issue.

Youtube Says It Will Now Warn Creators Before Posting Videos

YouTube has released its new feature called 'Checks,' which will evaluate potential copyright breaches and ad suitability restrictions before a video is posted. The feature will be able to assist producers in reducing the number of videos posted with copyright claims. If a copyright claim is detected, authors will be able to fix it by clicking on the 'See info' button.

China Plans To Curb Trademark Squatting

The China National Intellectual Property Administration (CNIPA) has announced its Special Action Plan to Tackle Malicious Trademark Squatting. The plan aims is to promote high-quality intellectual property rights. It focuses on countering malicious trademark registration/squatting for well-known or newly famous names, locations, activities, and signs, and defines ten prohibited behaviours.

Taxation Law

Clauses In Tax Audit Report Deferred Till Next Year

The Central Board of Direct Taxes (CBDT) has issued Circular No. 05/2021 dated March 25, 2021, by which it has deferred the applicability of certain Clauses of Form 3CD, that is the Tax Audit Report till March 31, 2022. The clauses included are Clause 30C and Clause 44 of the Form 3CD.

CBDT Releases Income-Tax (4th Amendment) Rules, 2021

Recently, the Central Board of Direct Taxation (CBDT), notified the Income Tax (4th Amendment) Rules, 2021 through Notification No. 16/2021 dated 12-03-2021, to enhance the scope of the transactions to be reported under the Statement of Financial Transaction (SFT) as per Rule 114E.

TMT Law

Parliamentary Committee On It Questions The Legality Of New It Rules

The Parliamentary Standing Committee on Information Technology has questioned the legality of the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 meant to regulate OTT and social media platforms. The committee questioned whether these rules align with the legal framework and the regulatory mechanism consisting of only bureaucrats and not representatives of civil society, judiciary, and professionals.

TRAI Attempts To Tackle Unsolicited Commercial Communication

The Telecom Regulatory Authority of India (TRAI) has issued a stringent warning to business entities to curb the menace of unsolicited commercial communication (UCC). The regulator has decided that those entities which do not comply with the regulatory requirements would not be allowed to send bulk communication using telecom resources. Recently, UCCs have become a major source of inconvenience for the public, mostly leading to fraudsters using these communications to defraud gullible consumers. Read more

Whatsapp Faces Antitrust Investigation In India Over The New Update

The Competition Commission of India (CCI) has ordered an investigation into the privacy policy update announced by WhatsApp. The Commission alleged that WhatsApp's policies are exploitative owing to unreasonable collection and sharing of user data. It mentioned that the 'take-it-or-leave-it approach adopted in the policy was unreasonable. CCI has requested a thorough and detailed investigation to determine the full

extent and impact of data sharing via the involuntary consent of users. Read more

Rules For Procurement Of Telecom Equipment Amended

The government has amended the rules for procurement of telecom equipment for Internet Service Providers (ISPs) requiring them to purchase from trusted vendors only. This move comes on the heels of the government's recent changes to telecom equipment procurement rules for operators. This change would affect companies that hold ISP licenses, making it mandatory for them to purchase telecom equipment from the government's finalized list of trusted goods.

Securities Rights

New Penalty Structure For Delivery Default In The Derivatives Segment

SEBI has released a new framework for the levy of penalty in the commodity derivatives segment in the event of delivery default. In agricultural and non-agricultural commodities, the Spenalty for delivery default by seller shall now be 4 per cent and 3 per cent of the settlement price plus replacement cost, respectively. The new norms will come into force from the first trading day of May 2021. Read more

Amended Qualification Norms

In three separate notifications issued on March 16, the Securities and Exchange Board of India (SEBI) notified new regulations for portfolio managers, investment advisers, and research analysts with respect to their qualifications. Now, "the post graduate programme in securities market of not less than one year offered by NISM" will be an eligible qualification for portfolio managers, investment advisers, and research analysts. Read more

New Rules For Market Infrastructure Institutions

SEBI has released a new framework for the Business Continuity Plan (BCP) and Disaster Recovery of Market Infrastructure Institutions (MIIs), to be implemented within 90 days. In the event of disruption of any one or more of the 'critical systems', the MII has to declare that incident as 'disaster' within 30 minutes and take measures to restore operations including from the Disaster Recovery Site within 45 minutes of the declaration of 'disaster'. Read more

Norms For PAN & UCC Amended

SEBI has amended provisions related to the Unique Client Code and mandatory requirement of Permanent Account Number

(PAN). To rationalize the compliance requirement of collecting and maintaining copies of PAN of clients by their respective members, exchanges having commodity derivatives segment now have to "ensure that the members of their exchanges collect copies of PAN cards issued to their existing as well as new clients after verifying with the original." Read more

MOTOR VEHICLES (REGISTRATION AND FUNCTIONS OF VEHICLE SCRAPPING FACILITY) RULES, 2021

The Ministry of Road Transport and Highways, on March 15, 2021, released the Motor Vehicles (Registration and Functions of Vehicle Scrapping Facility) Rules, 2021. The rules outline the criteria for defining end-of-life vehicles and scrapping them, and also make provisions for scrapping facilities for safe disposal of waste and material recovery.

According to Section 2 of the Draft Rules, these provisions lay down the procedure for establishment of Registered Vehicle Scrapping Facility ('RVSF') and will apply to all vehicles and their last registered owners, Automobile collection centres, Automotive Dismantling, Scrapping and Recycling Facilities and recyclers of all types of automotive waste products.

Under the proposed policy, a scrapped vehicle will be offered a monetary value close to 4-6 % of the showroom value, and there could even be up to a 5% discount on the purchase of a new vehicle if a scrap certificate is produced. Additionally, it also offers a 25% discount in road tax and proposes to de-register vehicles that fail fitness tests or are unable to renew registrations after 15-20 years of use, among other provisions.

Objections and suggestions to these draft rules from the general public have been invited and can be sent within 30 days from the date on which the copies of the notification as published in the Official Gazette, are made available to the public (i.e., till April 14, 2021).

Read More

CONSULTATION PAPER ON REVIEW OF REGULATORY PROVISIONS RELATED TO INDEPENDENT DIRECTORS

The Securities & Exchange Board of India ('SEBI') released a Consultation Paper on Review of Regulatory Provisions related to Independent Directors ('IDs') on March 01, 2021. It consists of various proposals for amendments to the present provisions concerning the IDs in the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 ('LODR Regulations').

SEBI had first introduced the concept of IDs based on the recommendations of the Committee on Corporate Governance under the Chairmanship of Shri Kumar Mangalam Birla in 1999, and the latest amendments were made based on the recommendations of the Committee on Corporate Governance set up under the chairmanship of Shri Uday Kotak in 2017.

Several changes have been proposed to the LODR Regulations mainly to strengthen the status of IDs. These include giving a larger role to minority shareholders in the appointment/removal of such IDs, proposing a higher remuneration for them, strengthening the Audit Committee/Nomination and Remuneration Committee (NRC) even further, among other important changes.

Public Comments on the same have been invited by the SEBI to be sent latest by April 01, 2021, in the prescribed format.

Read More

RECENT ON THE BLOG

ANTI-DUMPING DUTIES & ANTI-COMPETITIVE BEHAVIOUR: THE IRONY

The guest post is authored by Mr. Lokesh Bulchandani (Associate, Lakshmikumaran & Sridharan Attorneys) and Divya Swamy (Advocate, Delhi High Court), in this post the author offers a suggestive approach to re-conceptualize the interaction between the two regimes.

Read more here.

THE TUSSLE BETWEEN INTERNATIONAL INVESTMENT LAW & EU INVESTMENT LAW – END OF INTRA EU BITS

The post is authored by Shambhavi Sinha, a 4th Year Student of B.B.A.LL.B (Hons.) at Symbiosis Law School, Pune. The Author in this blog presents an in-depth analysis of the implications of this move on the future and pending investment arbitration proceedings while highlighting the differences between international investment law and EU investment law.

Read more here.

AFTERMARKET MONOPOLISATION: AN ANALYSIS OF THE CHICAGO AND POST CHICAGO SCHOOLS OF THOUGHT

The two-part post is authored by Ayushi Dubey & Yash Jain, 4th year Student of B.A.LL.B. (Hons.) at the Institute of Law, Nirma University, Ahmedabad. The authors in this blog analyse how the Chicago and post-Chicago Schools of Thought differ in their interpretation of aftermarket monopolization, while giving a global perspective on the issue.

Read more here.

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