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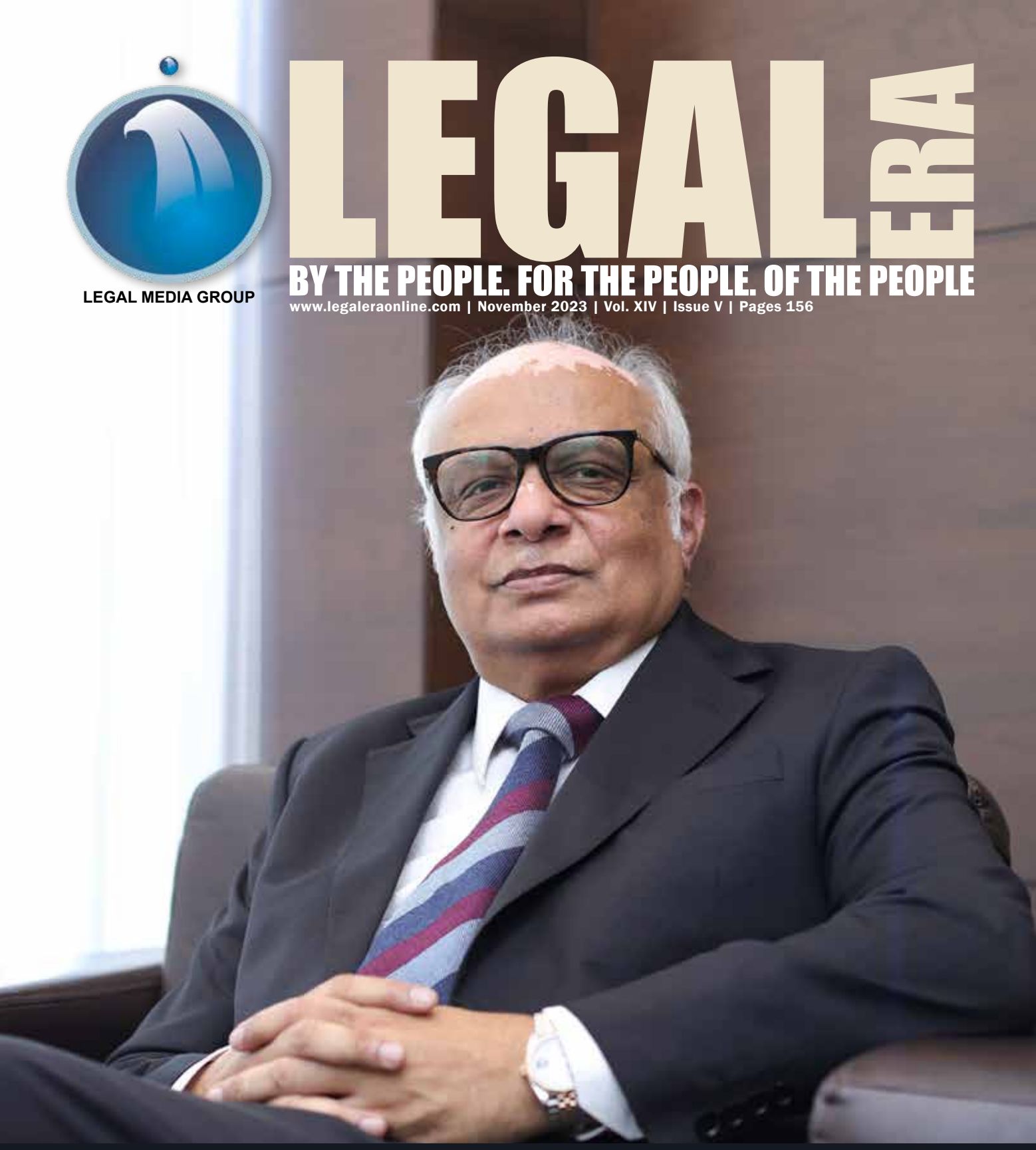

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30th November 2023 | Hotel Taj West End, Bengaluru, India

THEME: IP INNOVATION, STRATEGY, EMERGING LANDSCAPE, CHALLENGES & OPPORTUNITIES

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Legal Era aims to provide "in the trenches" editorial that gives Common Man, Law Students, Lawyers, Business Leaders and Corporate Managements a detailed outlook of the current legal scenario.

"Legal Era aims at Initiating, Integrating & Innovating ways and means to establish thought-provoking seminars with a vision to proliferate knowledge and optimise business opportunities."

-Aakriti Raizada
Founder & Managing Editor

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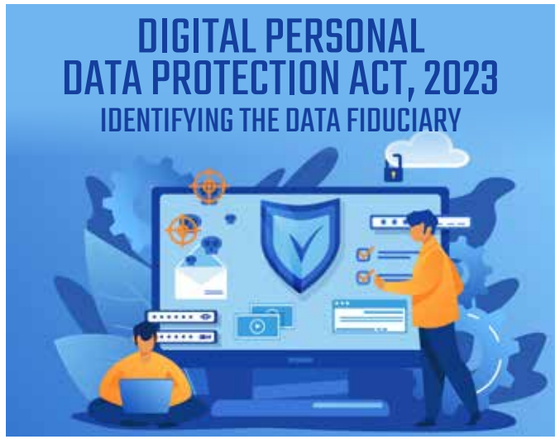
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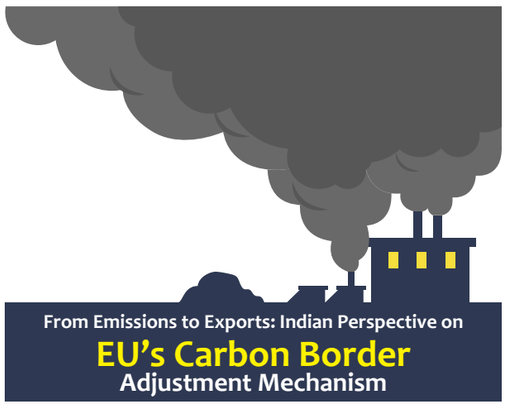
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To Advertise, Or Not To
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That Is The Question


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ENFORCEABILITY OF
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CYRIL AMARCHAND MANGALDAS ADVISED ON ILINK GROUP'S FUNDRAISE FROM TRUE NORTH

Cyril Amarchand Mangaldas acted as the legal counsel for iLink Group (iLink) and founder Sreebalaji KS, in relation to its USD 75 million fundraising from True North.

As a part of the transaction, iLink, its founder, Sreebalaji KS and other members of the founder group entered into definitive agreements with Hale Vitals LLP ("True North"), pursuant to which, True North will, by way of both primary and secondary acquisition, invest USD 75 million in iLink, for a minority interest in iLink.

This investment is intended to fund the future growth prospects of the iLink, which includes significant operations abroad. The transaction was subject to completion of standard conditions precedent.

Additionally, given the existing group structure, it was considered prudent to create a family trust for the promoter group for estate planning purposes.

The firm's private client practice team assisted the client through the process from conceptualisation to execution of the trust deed and other key transaction documents relating thereto.

The General Corporate Practice of Cyril Amarchand Mangaldas advised on the transaction and setting up of private trust for the promoter group. The transaction team was led Amarta Roy, Partner; Vishwanath Pratap Singh, Partner; Aatmin Shah, Principal Associate; Nikhil Variyar, Senior Associate; Radhika Shukla, Associate; Mishika Ravishankar, Associate and Aashna Lakhotia, Associate.

The firm's private client practice team lead by Radhika Gaggar, Partner and Co-Head, Private Client Practice; Shaishavi Kadakia, Partner; with support from Radhika Parthasarathy, Associate; assisted the client in relation to estate planning.

The parties and advisor to the transaction included Lincoln International (acted as investment banker for iLink Group); Taft Law (acted as International legal counsel for iLink Group); and Foley & Lardner (acted as International legal counsel for True North), and Khaitan & Co. (acted as Indian legal counsel for True North). The transaction was signed on 27th August, 2023; and concluded on 03rd October, 2023.

TRILEGAL ADVISED ON THE FIRST EVER ZCZP ISSUANCE ON SOCIAL STOCK EXCHANGES

Trilegal advised on the first-ever proposed public issuance of zero-coupon-zero-principal instruments (ZCZP) to be listed on the social stock exchange segments of National Stock Exchange of India Limited (NSE) and BSE Limited (Social Stock Exchanges) by SGBS Unnati Foundation (Unnati). Considering the pioneering nature of the transaction, it involved significant regulatory analysis of the capital raising framework.

Unnati is a Bangalore-based not-for-profit organisation (NPO) focused on training underprivileged youth and helping them seek gainful employment. Unnati has filed its final fund raising document with the Social Stock Exchanges.

The proceeds from the ZCZP issuance are proposed to be deployed towards Unnati's learning and empowerment program, which is expected to impact the lives of approximately 10,000 young individuals in their final year in government colleges. The Trilegal team advising on the matter was led by our Capital Markets Partner, Richa Choudhary, and comprised lawyers Maitreya Rajurkar, Senior Associate, and Aayush Khandelwal and Urmil Shah, Associates. Partners Rahul Matthan, Nishant Parikh and Sridhar Gorthi also provided strategic inputs on the transaction.

Trilegal was the sole counsel on the transaction, and Unitus Capital Private Limited was an advisor.

SARAF AND PARTNERS ACTED FOR VIATRIS IN DIVESTMENT OF ITS WOMEN'S HEALTHCARE BUSINESS AND API BUSINESS IN INDIA

Global healthcare leader Viatris, (formerly known as Mylan), has taken a significant step towards its strategic goals by entering into agreements on October 1st to divest key business segments, including its Women's Healthcare and Active Pharmaceutical Ingredients (API) businesses. The total consideration for these divestments amounts to a substantial USD 1.2 billion.

Viatris will be transferring its API business in India to Iquest Enterprises, a prominent Indian pharmaceutical company. This transaction encompasses three manufacturing facilities and a state-of-the-art R&D laboratory. In parallel, Viatris will divest its Women's Healthcare business, which primarily specializes in oral and injectable contraceptives, to Insud Pharma, a distinguished Spanish pharmaceutical enterprise. This divestiture will result in Viatris streamlining its business across India and abroad.

This multifaceted deal presented various intricacies, making it a distinctive transaction within the industry.

Saraf and Partners played a pivotal role in facilitating and advising Viatris throughout the entire transaction. The Firm advised on every aspect of the transaction including overall deal structure, diligence support, regulatory compliance, as well as negotiation and finalization of the deal documents with the buyer. On account of criticality of the pharmaceutical sector for public health, the Firm ably identified business continuity issues and provided workable solutions to ensure no disruption occurs at the time of transition of business to buyers. Going forward the Firm will continue to support Viatris in the implementation of the transaction including completion of conditions precedents, satisfying closing and post-closing obligations.

Mohit Saraf, Bikash Jhawar and Nipun Vaid

The Saraf and Partners team was spearheaded by the Firm's Founder and Managing Partner, Mohit Saraf, along with Senior Partner Bikash Jhawar and Partner Nipun Vaid, all of whom were ably supported by Navomi Koshy (Principal Associate), Alex Koshy, and Srikari Kancherla (Associates).

Furthermore, Akshayy S Nanda (Partner) provided expert advice on competition-related aspects of the deal, while Sahil Arora (Partner) contributed insights on Foreign Direct Investment (FDI) considerations. Amit Gupta, a Partner with expertise in tax matters, offered guidance on the deal's tax-related aspects. Akshay Jain, another Partner, advised on employment law matters inherent to the transaction.

According to the Firm, this divestment marks a significant milestone in Viatris' strategic journey, and Saraf and Partners takes immense pride in having been an integral part of this transformative transaction.

DSK LEGAL ADVISED KAREENA KAPOOR KHAN IN HER NEW SKINCARE VENTURE

Vellvette Lifestyle Pvt. Ltd., which owns the beauty brand Sugar Cosmetics established by co-founders Vineeta Singh and Kaushik Mukherjee, has entered into a transaction with actor Kareena Kapoor Khan to introduce a new Korean skincare brand named Quench Botanics. Ms Khan as a strategic investor will be a co-owner of Quench Botanics.

We are delighted to share that Ms. Chandrima Mitra and Mr. Gaurav Mistry, Partners at DSK Legal, led the team that advised and assisted Ms Khan in this transaction. The same team had also advised Ms. Khan for her investment in a D2C digital lifestyle-oriented fresh fruit and veggie brand Pluckk.

The team comprised of Akanksha Tiwary (Associate Partner), Shantanu Shah (Senior Associate), Bhakti Parekh (Senior Associate), Eram Qureshi (Senior Associate) and Akshit Rajpal (Associate).

The same team had also represented actor Ms Parineeti Chopra for her investment in Clensta International, a health and personal care startup whose products are based on waterless technology. Ms Chopra is an investor, partner, and brand ambassador of Clensta International.

GLA & CO ADVISED NEOM SEAL LANDMARK LOGISTICS JOINT VENTURE WITH DSV

GLA & Co, a regional law firm in the MENA region with offices in Dubai, Abu Dhabi, Riyadh, Kuwait, Cairo, and Beirut, has advised NEOM, Saudi Arabia's mega-project, on a ground-breaking $10 billion logistics joint venture with DSV-Global Transport and Logistics.

The joint venture is a major milestone in NEOM's development, and it will play a vital role in the city's transformation into a global trade and logistics hub.

NEOM's exclusive logistics joint venture with DSV will invigorate Saudi Arabia's logistics sector and accelerate the country's Vision 2030, demonstrating NEOM's steadfast commitment to sustainable logistics solutions.

Pending customary regulatory approvals expected in Q2 2024, the NEOM-DSV joint venture is poised to indelibly impact the Saudi Arabian economy.

In this visionary partnership, NEOM Company, the master developer of NEOM, holds a majority stake of 51 per cent, with DSV holding the remaining 49 per cent. The two companies have committed an impressive $10 billion to the joint venture, which will be split equally between them up until December 31, 2031.

The NEOM-DSV joint venture will offer a comprehensive range of ground, sea, and air logistics services essential for realising ambitious projects in NEOM. As a cutting-edge living laboratory for the future, NEOM's Red Sea location is poised to spur economic growth and infrastructure development in Saudi Arabia, generating over 20,000 jobs and contributing to the country's sustainable growth.

NEOM Company, the forward-thinking master developer of the NEOM region, is strategically located in the north-western region of Saudi Arabia, adjacent to the Red Sea coastline. Its primary objective is to establish a dynamic living laboratory that offers a glimpse into the future, highlighting the boundless potential of human ingenuity and technological advancements.

DSV-Global Transport and Logistics, a global leader in transport and logistics services, is NEOM's strategic partner in this project. DSV's dedicated workforce of over 75,000 employees in more than 80 countries is passionate about delivering exceptional customer experiences and high-quality services. This strategic partnership will allow both entities to leverage their expertise and resources to shape the future of logistics within NEOM.

The NEOM-DSV joint venture has the potential to revolutionize the logistics sector, enabling NEOM to accelerate its ambitious projects, boost economic growth, and usher in a new era of sustainable logistics solutions. This ground-breaking partnership represents a momentous achievement in NEOM's continuous pursuit of its Vision 2030 and reaffirms Saudi Arabia's dedication to promoting innovation and global progress.

"We are proud to have been part of this transformative venture that will leave a lasting impact on the logistics industry and the Saudi economy. Our dedicated team worked tirelessly to ensure the success of this deal, and we are excited to see the positive changes it will bring to NEOM and the region," Fawaz Aldubaikhi, Saudi Partner at GLA & Co, remarked on the deal.

"For us, this deal was important in two ways. First, it was wonderful to reunite with Moalem Weitemeyer and Freshfields again as we worked with amazing team members from these top law firms on the DSV $4 Billion acquisition of Agility a couple of years ago. Second, this deal highlights the strength of our Saudi practice, which is quickly becoming a leading local law firm in Riyadh," Alex Saleh, Managing Partner, added.

The GLA & Co team was jointly led by Alex Saleh and Ahmad Saleh, supported by the valuable contributions of Fawaz Aldubaikhi, Maha El Miehy, Asad Ahmad, Shahad Al Humaidani, and Hussein Ali Bu Najimah.

MEYSAN PARTNERS SAUDI ACTED ON SALUMCO'S STRATEGIC DIVESTMENT

Meysan Partners Saudi advised the shareholders of Saudi Aluminum Industries Company (Salumco) on the sale of a 33.33 per cent stake to Increase Industrial Development Co, a prominent Saudi group led by Saleh Al Hossan.

Meysan Partners Saudi played a crucial role in this significant transaction, providing legal guidance on all aspects, including restructuring, negotiating transaction agreements, and offering ongoing advisory services until the deal's completion.

Salumco is an eminent manufacturer specialising in architectural aluminium systems and products within the construction and facade industry with over five decades of experience.

Faisal Al Hoshan, a dispute partner, and Michel G. Ghanem, a corporate partner, co-led the Meysan team, supported by Counsel NeylaRahal.

"We are delighted to have worked alongside the shareholders on this strategic divestment. Acting as sole legal counsel, our effective collaboration and unrivalled restructuring experience enabled us to reach a successful outcome," Michel G. Ghanem stated.

The transaction remains contingent on obtaining customary regulatory approvals.

HOGAN LOVELLS ACTED ON CHOLAMANDALAM FINANCE'S $480 MILLION OFFERING

Global law firm Hogan Lovells advised lead managers Kotak Mahindra Capital, HSBC Securities, and IIFL Securities on Cholamandalam Investment and Finance Company Limited's $480 million qualified institutions placement (QIP) of equity shares and compulsorily convertible debentures (CCDs).

Cholamandalam Investment and Finance Company Limited (Cholamandalam Finance), is a leading Indian non-bank finance company and the financial services arm of the Murugappa Group, a 122-year-old conglomerate. The proceeds from the offering will be used for business growth and to augment the capital adequacy requirements of Cholamandalam Finance.

The simultaneous offering of equity shares and compulsorily convertible debentures (CCDs) by Cholamandalam Finance is a milestone transaction and the largest equity or equity-linked offering in 2023 by any Indian non-bank company to date.

The Hogan Lovells team associated with the landmark deal was led by Singapore Office Managing Partner and India Co-Chair, Biswajit Chatterjee, with support from counsel Kaustubh George and associates Aditya Rajput, Suchisubhra Sarkar and Utkarsh Mishra. Henry Kahn (partner, Baltimore) advised on investment company-related regulatory aspects while Nancy O'Neil (partner, Baltimore) and David Steenburg (senior associate, Washington D.C.) advised on US tax matters.

"We are honoured to have had this opportunity to advise on this significant transaction in the Indian market. This transaction reflects our market-leading capabilities in India, working as a trusted advisor to longstanding clients on complex transactions," Biswajit Chatterjee said while commenting on the transaction.

SHARDUL AMARCHAND MANGALDAS ADVISED SHODEN DEVELOPERS PRIVATE LIMITED ON REDEVELOPMENT OF A SOCIETY MUMBAI

Shardul Amarchand Mangaldas advised Shoden Developers Private Limited, part of the renowned House of Hiranandani Group ("Developer"), on acquiring development rights to the property admeasuring approximately 9.5 Acres situated at Chembur, Mumbai from Maitri Park Co-operative Housing Society Limited ("Society"), consisting of more than 200 members, and the erstwhile developer. The Developer intends to develop a premium residential project on the land.

The transaction team was led by Bhoumick Vaidya, Partner; and Harshini Kotecha; Senior Associate.

NISHITH DESAI ASSOCIATES ADVISED ETERNALIA CREATIVE & MERCHANDISING PRIVATE LIMITED

Reliance Retail Ventures Limited acquired 51% stake in Eternalia Creative & Merchandising Private Limited ("Eternalia"). Eternalia owns the brand "Ed-A-Mamma" which was launched by Alia Bhatt in 2020 as a home-grown brand focused on conscious clothing.

The acquisition will enable the brand to expand into new categories such as personal care and baby furniture.

It will also provide Ed-a-Mamma with access to Reliance's supply chain, retail and marketing network.

Nishith Desai Associates acted as the legal advisors to Eternalia Creative & Merchandising Private Limited.

The team comprised of Gowree Gokhale, Hetal Pandya, Aparna Gaur and Aniruddha Majumdar.

CLYDE & CO ACTED IN STS ACQUISITION BY ZAINTECH

Clyde & Co is advising the shareholders of Specialized Technical Services Company (STS) on its complete sale to ZainTECH. This transaction is subject to regulatory approvals.

STS, a key player in the digital transformation arena spanning Jordan, Saudi Arabia, the UAE, Bahrain, and Iraq, has been in operation since its inception in 1989. Boasting a team of more than 350 professionals, STS has forged enduring alliances with top industry giants such as Cisco Systems, Dell Technologies, IBM, Microsoft, Oracle, and numerous others. The company's services cater to a broad spectrum of over 500 clients in sectors ranging from banking, government, healthcare, and education, to telecommunications, covering the Middle East and North Africa.

Launched in October 2021, ZainTECH stands as the digital and ICT powerhouse within the Zain Group. It focuses on driving the transformation and enhancing the capabilities of enterprise and government customers by embracing and implementing cutting-edge technologies.

Clyde & Co is acting as lead external counsel to the shareholders of STS. The team is led by partner and head of corporate – Middle East, Naji Hawayek (corporate), and senior associate Afraz Hussain (corporate) who are supported by partners Ray Smith (tax) and Malcolm Frost (tax), and associate Sara Magdy (corporate).

Clyde & Co is serving as the primary external legal counsel for the shareholders of STS. Heading the team are Naji Hawayek, partner and head of corporate for the Middle East, along with senior associate Afraz Hussain, both specialising in corporate law. They receive support from partners Ray Smith and Malcolm Frost, experts in tax law, and associate Sara Magdy, who focus on corporate matters.

LINKLATERS ADVISED DEUTSCHE BÖRSE ON €3 BILLION DIGITAL BOND ISSUANCE

Linklaters advised Deutsche Börse AG on the successful issuance of €3 billion in corporate bonds in three tranches. These are the first corporate bonds placed with institutional investors to be represented by central register securities in accordance with the German Electronic Securities Act (eWpG). Clearstream Banking AG, Frankfurt, is the registrar and uses its own digital platform D7 for this purpose.

Deutsche Börse AG issued three tranches of corporate bonds with a total principal amount of €3 billion. The first tranche has a principal amount of €1 billion, an annual coupon of 3.875 per cent, and a maturity date of 2026. The second tranche has a principal amount of €750 million, an annual coupon of 3.750 per cent, and a maturity date of 2029. The third tranche has a principal amount of €1.25 billion, an annual coupon of 3.875 per cent, and a maturity date of 2033.

Linklaters, led by Frankfurt partners Alexander Schlee, Peter Waltz, and Counsel Martin Rojahn, advised Deutsche Börse AG on all aspects of the bond issuance, including capital markets, corporate, and tax law.

LINKLATERS ASSISTED GBL CREATE GLOBAL CX LEADER WITH $4.8 BILLION WEBHELP-CONCENTRIX DEAL

Linklaters has acted as Financial Regulatory Counsel to Groupe Bruxelles Lambert (GBL) on the successful completion of the $4.8 billion combination of Webhelp and Concentrix. This combination further positions Webhelp and Concentrix as a global provider of customer experience (CX).

As the majority shareholder of Webhelp since 2019, this combination positions GBL as the largest shareholder of the combined company, a leader in CX services and technologies with an expanded range of generative AI solutions, digital capabilities, and high-value services.

Webhelp, a French payment institution specialising in sales, marketing, and payment services, is a recognised leader in CX solutions and technology across 58 countries. Concentrix is a Nasdaq-listed global leader in CX solutions and technology, with operations in 40 countries across six continents.

GBL is a long-established investment holding company listed on Euronext Brussels for over 60 years. A leading and active investor in Europe, GBL focuses on long-term value creation with the support of a stable family shareholder base.

Linklaters advised GBL on the financial regulatory aspects of the transaction in Europe and the UK, and GBL and Concentrix on the financial regulatory aspects of the transaction in other non-EEA jurisdictions (North America, South America, Africa, and Asia).

The Linklaters multijurisdictional regulatory team was led by Paris partner Ngoc-Hong Ma, with associates Emilie Rochat and Anna Petrusa; London counsel Jean Price and associates Grace Megroz and Krishan Sood; and Amsterdam partner Bas Jennen and associate Jan-Jouke van der Meer.

LATHAM & WATKINS REPRESENTED BOLT THREADS IN ITS MERGER WITH GOLDEN ARROW

Bolt Threads, Inc., has announced a definitive agreement for a business combination with Golden Arrow Merger Corp., a move that will see Bolt Threads transition into a publicly traded company.

The resulting entity will be known as "Bolt Projects Holdings, Inc." and is anticipated to maintain its listing on the Nasdaq under a new ticker symbol, "BSLK."

Concurrent financing transactions are set to yield a minimum of £26 million in gross proceeds for the company. This includes a fully committed common stock PIPE offering of up to £21 million for £10.00 per share, anchored by Bolt Threads' existing investors, which include Baillie Gifford, Temasek, Top Tier, Founders Fund, Formation 8, Foundation Capital, and Golden Arrow Sponsor, LLC.

Latham & Watkins is overseeing Bolt Threads' interests in this transaction, led by a team of legal professionals. The team is helmed by partners Jim Morrone, Drew Capurro, and Haim Zaltzman, with support from associates Nima Movahedi, Tiana Baghdikian, Shannon Cheng, Erik Jensen, Danny Del Giorno, Jacob Walsh, Courtney Lem, Viva Jerónimo, and Erica Kucharski.

The firm is also addressing debt finance matters through partner Dan Van Fleet and associate Hyunji Lee, handling benefits matters via partner Julie Crisp, and managing tax matters led by partner Katharine Moir and associate Gregory Conyers. Additionally, Latham & Watkins is overseeing IP and data privacy matters with partner Michelle Gross and associates Adriana Beach and Caroline Omotayo, HSR matters with partner Joshua Holian and counsel Joseph Simei, and trade controls/sanctions matters with counsel Andrew Galdes.

CLIFFORD CHANCE PROVIDED LEGAL COUNSEL TO IRIS ENERGY ON US$300 MILLION AT-THE-MARKET OFFERING

Clifford Chance has guided Iris Energy Limited on the Australian law aspects of its SEC-registered at-the-market offering of ordinary shares, with a total value of up to US$300 million.

Iris Energy is a next-generation data centre company that builds, owns, and operates facilities powered by 100 per cent renewable energy. The company's data centres are optimised for power-dense computing, including Bitcoin mining and other applications. Iris Energy targets sites with low-cost, underutilised renewable energy resources and supports local communities.

The Clifford Chance team, led by Sydney partner Reuben van Werkum, with counsel John Karantonis and associate Joshua Yan, provided comprehensive advice on the Australian law aspects of the transaction.

“We highly value our longstanding relationship with Iris Energy and were delighted to continue to support the business on this significant offering. The data

centre industry has been identified as one that could benefit from sustainable solutions. Iris Energy is a leader in driving this shift to environmentally friendly and socially responsible operations," Reuben van Werkum said.

Reuben van Werkum added: "Clifford Chance is closely aligned to the energy transition thematic, and we have significant expertise globally assisting businesses to acquire or develop sustainable assets across major infrastructure and energy asset classes. This transaction also underscores our track record of providing top-tier advice to clients like Iris Energy who are undertaking significant fundraising transactions with cross-border legal considerations."

Clifford Chance is a leading law firm for transactions in the sustainable infrastructure and renewable energy sector in Asia Pacific. Recently, the firm advised on the 1,022MW Hai Long offshore wind farm project in Taiwan and the 5GW Elanora offshore wind farm project in Australia, which is set to generate 40 per cent of the state of Victoria's current energy needs once fully operational. Clifford Chance Australia's team brings deep industry-specific knowledge and expertise in renewable projects.

MAYER BROWN ADVISED THE HALIFAX GROUP EXPAND INTO HOME CARE WITH ACQUISITION OF SODEXO'S DIVISION

A global team of lawyers from Mayer Brown's different practice areas is advising private equity firm The Halifax Group on its agreement to acquire Sodexo's Worldwide Home Care division, which includes its home care subsidiaries in the US, UK, Ireland, France, Denmark, Norway, Sweden, and Brazil.

The Halifax Group is a Washington-headquartered private equity firm that invests in middle-market businesses alongside management and entrepreneurs. It specialises in equity recapitalisations, carve-outs, and management buyouts, and invests across a range of industries, including healthcare, business services, and franchising in various sectors that include health and wellness as well as outsourced business services.

Sodexo's Worldwide Home Care division, based in Irvine, California, is a leading provider of in-home care services across eight countries. The division is known for its high-quality professional care and operates as a franchisor in the US in the non-medical personal care sector.

The deal expected to complete in the fourth quarter of 2023, is subject to regulatory approval. This is the company's fourth mandate with this valued client.

The team for this complex international carve-out was led by client partner Perry Yam and included corporate and securities partners James West (London), Adam Arnett (Chicago), Olivier Aubouin (Paris), Guilherme Tranquillini (Brazil), and Joseph Castelluccio (New York), associates Olivia Altmayer (Chicago), Karen Chong (New York), Margaux de Lembeye (Paris), Alasdair Maher (London), Juliana Deguirmendjian and Isabela Gonçalves Franco (both Brazil), trainee Priyanka Patel (London).

Banking and finance partners Beth Vogel and Elizabeth Hermann Smith (both Chicago), tax partners Jason Bazar (New York), James Hill (London), and Elodie Deschamps (Paris), associates Stephanie Wood (New York), Kirsten Hunt (London), and Giampaolo Marzulli (Brazil), antitrust and competition partner Oral Pottinger (Washington DC) and counsel Mark Hills (London), IP partner Paul Chandler and associate Corina Cercelaru (both Chicago), and employment and benefits consultant Andrew Stanger (London) were also the key members of the Mayer Brown's team of lawyers.

CLIFFORD CHANCE AND AS&H ADVISED ON HISTORIC ADES IPO

Clifford Chance and its Saudi Arabian joint venture partner, Abuhimed Alsheikh Alhagbani Law Firm (AS&H), advised ADES Holding Company on its landmark SAR 4.6 billion (approximately US$1.2 billion) initial public offering (IPO).

The IPO, which was the largest in the MENA region in 2023, gave ADES an implied market capitalisation of SAR 15.2 billion (around US$4.1 billion) upon listing. The shares of ADES were successfully listed on the Saudi Exchange (Tadawul) on October 11, 2023.

The IPO included an international institutional investor segment under Regulation S of the U.S. Securities Act of 1933. Over 90 per cent of the IPO proceeds were raised from domestic and international institutional investors, with the remainder coming from Saudi retail investors. The IPO was oversubscribed by 62.7 times, attracting a total demand of SAR 286.9 billion (approximately US$76.5 billion), a testament to its appeal.

ADES Holding Company is a leading provider of oil and gas drilling services in the Middle East and North Africa (MENA) region, operating in seven countries - Saudi Arabia, Kuwait, Qatar, Egypt, Algeria, Tunisia, and India. ADES specialises in onshore and offshore contract drilling and workover services, which help to maintain, repair, and enhance oil production.

HERBERT SMITH FREEHILLS ADVISED DAL ON MAJOR ELECTRIC TRAIN LEASING DEAL WITH DB REGIO

Herbert Smith Freehills has advised DAL Deutsche Anlagen-Leasing (DAL) on a deal to lease 15 new electric traction vehicles to DB Regio AG for use on the local rail passenger network "Nord Süd 2." The law firm also helped DAL secure financing from HelabaLandesbank Hessen-Thüringen.

The deal relates to 12 double-deck electric multiple units (Stadler KISS) and three single-deck electric multiple units (Stadler FLIRT XL) from the Swiss manufacturer Stadler. The trains are scheduled to operate from December 2026 on tracks between the cities of Stralsund and Halle (Saale) and between Rostock and Berlin ("Nord Süd 2" network). The annual mileage is expected to be around 5 million train kilometres.

Two special purpose vehicles (SPVs) set up by DAL will be leased to DB Regio AG under long-term agreements after delivery.

DAL is a subsidiary of Deutsche Leasing AG, Germany's largest non-captive leasing company. With annual transaction volumes of around €2.4 billion, DAL is a leading specialist in realising private sector investments and infrastructure projects in Germany.

Herbert Smith Freehills is a regular advisor to DAL on rolling stock leasing transactions.

The Herbert Smith Freehills team advising DAL Deutsche Anlagen-Leasing was led by counsel Hannes Jacobi and included partner Kai Liebrich and associate Justus terVeen, all in the finance department.

HONG KONG BOUTIQUE GPS STRENGTHENS CORPORATE TEAM WITH ADDITION OF JOHN KOH

John Koh and Kareena Teh

Georgiou Payne Stewien (GPS), a Hong Kong boutique firm, has recruited its second partner in a few months, with corporate lawyer John Koh joining from FitzGerald Lawyers. John Koh's addition to GPS comes shortly after disputes lawyer Kareena Teh joined the firm from EY member firm LC Lawyers.

John Koh is a former managing partner of Osborne Clarke's Hong Kong office. In 2014, he was recruited by that firm from Bird & Bird to launch its presence in the Hong Kong Special Administrative Region (SAR). After Osborne Clarke closed its Hong Kong office in 2020, Koh joined local firm FitzGerald.

With over two decades of experience, Koh provides counsel in various areas, including general corporate matters, mergers and acquisitions, joint ventures, and foreign direct investment in the People's Republic of China (PRC). Additionally, he possesses particular expertise in the realm of commercial law within the digital business sector.

Koh's addition brings the total number of partners at GPS to six, joining the ranks of Phillip Georgiou, Sonny Payne, and Brett Stewien, who co-founded the firm back in 2017.

DIVYA KRISHNAN JOINS SINGULARITY LEGAL AS A COUNSEL

Divya Krishnan has been appointed as counsel by Singularity Legal, the international dispute resolution firm.

With over nine years of post-qualification experience, she has an impressive list of representing federal agencies, business houses, and construction & infrastructure clients in commercial arbitrations. She has an excellent track record in both international commercial arbitrations and investment arbitrations.

On her joining, Prateek Bagaria, the Partner at Singularity Legal, remarked, "We are thrilled to welcome Krishnan to our team. Our firm's mission is to provide the highest level of legal representation, and she embodies this commitment. She has a reputation for tenacity, legal acumen, and a strong focus on achieving the best possible results for our clients."

Krishnan stated, “I am thrilled to join Singularity Legal. It is a great opportunity to work with some of the most talented lawyers in this space while sharing a common vision and passion for cross-border disputes.”

Krishnan has advised and represented clients in arbitrations conducted under major arbitral rules involving a wide range of applicable laws and venues. She has also represented clients against States under the investment treaty regime.

Holding an LL.M. from Columbia Law School, Krishnan has previously worked with Covington & Burling LLP and DMD Advocates.

MAANAS JAIN, FORMER THREE CROWNS BARRISTER JOINS PAUL HASTINGS

Barrister Maanas Jain has made a recent transition to the global law firm Paul Hastings after dedicating over nine years of his career to Three Crowns LLP. He initially joined Three Crowns in 2014, just a few months after the firm's launch.

Jain's decision to move on from Three Crowns was met with warm sentiments from Constantine Partasides KC, one of the founding partners of the firm. He noted that Jain has evolved into an exceptional and committed attorney, emerging as a leader among his contemporaries in the global arbitration advocacy arena. Partasides expressed his confidence in Jain's promising future and conveyed well wishes from Jain's many friends at Three Crowns for the years ahead.

Jain is a barrister qualified in English law, with a specialisation in international commercial arbitration, investor-state disputes, and public international law.

Garreth Wong, who serves as the Global Co-Chair of International Arbitration at Paul Hastings, expressed excitement about Jain joining their renowned international arbitration team.

“His impressive track record and experience and his thought leadership in the arbitration community are testament to his commitment to top tier client service delivery,” Garreth Wong stated.

Joe Profaizer, the Global Co-Chair of International Arbitration, highlighted the significance of India as a jurisdiction.

“We are confident that with his long experience and extensive contacts in the region, Maanas will, alongside our colleagues such as Ronak Desai and BhavanaSundar, play a key part in further developing our India-related practice in the years to come,” Joe Profaizer added.

On his decision to join Paul Hastings, Jain commented, "I look forward to helping further build and grow the global practice of Paul Hastings over the coming years alongside Joe Profaizer and Garreth Wong.”

WALID SALIB JOINS ALDHABAAN & PARTNERS AND EVERSHEDS SUTHERLAND IN KEY LEGAL ROLE

AlDhabaan & Partners in association with Eversheds Sutherland, a prominent law firm collaboration in Saudi Arabia, has announced the appointment of Walid Salib as Corporate Partner and Head of its M&A practice in Saudi Arabia. Salib, an experienced corporate lawyer, was associated with the international law firm Freshfields Bruckhaus Deringer, where he served as the head of its Mergers and Acquisitions practice in Saudi Arabia.

Salib brings extensive expertise in advising on diverse areas such as public and private M&A, joint ventures, co-investments, and corporate structuring, spanning multiple sectors including healthcare, education, logistics, infrastructure, and F&B. Additionally, he has a proven track record of executing successful transactions in the oil and gas as well as pharmaceutical sectors.

Salib's clientele comprises sovereign wealth funds, private equity firms, family offices, and prominent multinational corporations. He possesses fluency

in both Arabic and English and boasts an in-depth understanding of the Saudi market and its local legal landscape.

His appointment underscores the strategic significance of Eversheds Sutherland's M&A practice, both within the region and on a global scale. Given that a substantial portion of the firm's ongoing and forthcoming M&A endeavours in the region is linked to Saudi Arabia, Salib will play a pivotal role in facilitating these activities and fostering growth opportunities for clients not only in Saudi Arabia but also across the broader Middle East region.

“Walid’s hire is a great win for us as he is a highly regarded and knowledgeable operator in that market. Walid has existing professional relationships and personal friendships at the firm so joining our team in Riyadh as a Partner and Head of M&A for Saudi is a natural fit for us,” Nadim Kayyali, Partner and Regional Head of the Company Commercial practice in the Middle East, Eversheds Sutherland, said.

Mohammed Al Dhabaan, Founding Partner Dhabaan& Partners, in association with Eversheds Sutherland, commented: “We are delighted to have Walid join our team. He has extensive knowledge of the Saudi market as well as in-depth expertise of advising on mergers and acquisitions in the Kingdom. He will be a real asset to our existing team of over 40 lawyers in Riyadh and will further enable us to provide the best of local and international advice to our clients.”

“I’m thrilled to welcome Walid to both the team and the firm and to have the opportunity to work with him once again. The impressive repertoire of in-depth knowledge and experience he brings will enhance both our existing local and global M&A capabilities, and reinforce the level of service and legal technical excellence we’re able to provide to our clients in the Saudi market and the wider region,” Zeid Hanania, Partner and Head of M&A, Middle East, Eversheds Sutherland, added.

WalidSalib expressed his delight, terming it as an exceptional opportunity, especially considering the impressive reputation that Eversheds Sutherland's M&A team has been consistently cultivating both in the local region and on a global scale.

“I’m looking forward to applying my skills and experience and working closely with Zeid and others, as part of an integrated regional and international M&A capability, to meet the increasingly complex needs of our clients,” WalidSalib stated.

LEADING COMMERCIAL LAWYER WILLEM STEENKAMP RETURNS TO AL TAMIMI & COMPANY, BOOSTING FIRM'S REGIONAL PRESENCE

Al Tamimi & Company, the leading law firm in the Middle East and North Africa (MENA), has welcomed back Willem Steenkamp to partner in its Corporate Commercial Department, where he will lead the commercial contracts and commercial agency practice in Dubai. Steenkamp's association with Al Tamimi & Company spans a significant period, commencing in 2008 and culminating with his promotion to Partner in 2017. While he departed Dubai in 2021, he maintained his contributions to the firm by fulfilling the role of an external consultant from a remote location during the interim period.

Steenkamp possesses an impressive career spanning more than 18 years, primarily focused on transactional and commercial advisory services. For 15 of those years, he practised UAE law with Al Tamimi & Company. His expertise is highly recognised, particularly in the realm of UAE commercial agencies.

Steenkamp is a trusted advisor to a diverse clientele, comprising both local and international blue-chip companies, whether listed or unlisted. He handles a wide spectrum of corporate and commercial matters, both contentious and non-contentious, with remarkable proficiency.

“Willem has been part of the firm for 15 years and his experience and expertise are second to none. His Partnership is a testament to his dedication to not only the firm but also the legal profession. There are very few lawyers in the market that have his depth of local knowledge on the market and legal landscape,” Samer Qudah, Managing Partner at Al Tamimi & Company, said.

Qudah added that Steenkamp's reappointment as a Partner reflects Al Tamimi & Company's commitment to supporting its professionals, nurturing talent, and offering them a platform to pursue their career aspirations.

“Willem is a well-respected figure in the community, he will continue to be an asset for us as we continue to ensure our clients receive the best advice and representation,” Qudah further stated.

Upon his reappointment, Steenkamp conveyed his profound sense of gratitude and excitement as he returned to Al Tamimi & Company as a Partner.

“Al Tamimi & Company has always demonstrated an unwavering commitment to the pursuit of excellence in the field of law and it gives me great pleasure to continue to contribute to the firm’s mission of providing exceptional legal services to our clients,” Steenkamp said.

Al Tamimi & Company's Corporate Commercial practice is a regional market leader, offering a full range of corporate commercial services. The team is ranked Band One in numerous independent legal directories, and several of its lawyers are recognised as leaders in their field by the Legal 500, Chambers and Partners, and other directories.

The team's forte lies in its extensive comprehension and expertise in the legal and regulatory landscape of the UAE, coupled with strong connections to local regulatory bodies. These assets help the Commercial team to remain current with emerging trends and approaches in the UAE market, facilitating the delivery of pragmatic and business-focused counsel that aligns with the client's objectives and accomplishes their business goals.

KOCHHAR & CO. ADDS ANIRUDH MUKHERJEE AS PARTNER IN EMPLOYMENT AND CORPORATE PRACTICE

Anirudh Mukherjee has been appointed by Kochhar & Co. as a partner in the employment and corporate practice in Gurugram.

Having over 16 years of experience, he advises both multinational and domestic clients on various contentious and non-contentious employment law matters. As part of his broader commercial law advisory practice, he also counsels on general corporate legal issues.

On his appointment, Rohit Kochhar, the founding member and managing partner of the firm remarked, “I am delighted to welcome Mukherjee to Kochhar & Co. His extensive expertise in handling transformations, transactions, restructurings, and complex employment matters, coupled with in-depth domain knowledge, will further strengthen our pan-India employment law practice and enhance the services we provide to clients, both in India and internationally.”

Conveying his excitement at his appointment, Mukherjee said he was glad to be a part of the firm and would contribute to its legacy of providing exceptional client service experience.

Mukherjee has been instrumental in developing and implementing codes of conduct and related

employment policies for a spectrum of clients ranging from start-ups to Fortune 500 companies.

With his multifaceted and cross-sectorial experience of driving complex commercial transactions and restructurings, he brings deep domain knowledge and understanding of businesses into providing pragmatic and commercially driven legal solutions to clients.

A 2007 graduate of Symbiosis International University, Mukherjee was a senior director at Lumiere Law Partners, an independent member firm of the Ernst & Young law network.

DENTONS LUATVIET APPOINTS NEW HEAD OF M&A AND PROJECT FINANCE

Dentons LuatViet, Dentons' member firm in Vietnam, has hired Eva Szurminska-Jaworska, a senior partner at PwC Legal, as the head of its M&A and project finance practice.

With over 25 years of experience, Szurminska-Jaworska advises clients in Europe, the United States, and Vietnam on investments, mergers and acquisitions (M&A), project finance, and debt and equity financing.

Szurminska-Jaworska worked at various PwC entities for over a decade, joining PwC Legal as a partner in Ho Chi Minh City in 2019. Previously, she worked at ILC Legal in Washington, D.C., and PwC Polska in Warsaw.

Dentons and Vietnamese firm LuatViet merged in 2021 to form Dentons LuatViet, which now has five partners.

MANISH GUPTA, PRATYUSH KHURANA AND ASHISH AHLUWALIA JOIN SHARDUL AMARCHAND MANGALDAS AS PARTNERS

Shardul Amarchand Mangaldashas announced that Manish Gupta, Pratyush Khurana, and Ashish Ahluwalia have joined the Firm as Partners in the general Corporate Practice.

The trio was earlier working at IndusLaw Partners. The firm has also added seven new associates to its Gurugram office.

On their appointment, Pallavi Shroff, the Managing Partner at the firm remarked, “We believe that the addition of the three general corporate partners to our firm will strengthen our presence in Gurugram as they bring a wealth of knowledge and experience across industries. We wish them all the success and look forward to a long and exciting journey ahead.”

Akshay Chudasama, the Managing Partner stated, “All three will undoubtedly add value to our team with their varied experience. We look forward to growing the firm together with them.”

Gupta has joined the firm as an equity partner. He has over 19 years of experience in cross-border and domestic M&A, private equity, and venture capital transactions across various sectors. With a BA.LL.B. (Hons) degree from the National Law Institute University, Bhopal, he has previously worked with Dentons Link Legal, Luthra & Luthra Law Offices, and Titus and Co.

Khurana has over 14 years of experience in M&A, joint ventures, business transfer, private equity, venture capital transactions, and general corporate advisory. Having a BBA.LL.B. degree from Symbiosis International University, Pune, he is a qualified company secretary. Khurana has previously worked with Link Legal, Khaitan & Co, and Clasis Law.

Ahluwalia has over 9 years of experience in general corporate including M&A, joint ventures, private equity, and venture capital. Holding a bachelor’s degree in law from the Campus Law Centre, University of Delhi, he is a qualified company secretary. Ahluwalia has previously worked with Link Legal, Shardul Amarchand Mangaldas, and AZB & Partners.

SARAF AND PARTNERS MARKS MILESTONE ANNUAL DAY EVENT AND EXPANDS FOOTPRINT IN HYDERABAD WITH NOTABLE PARTNER INDUCTIONS

In an impressive convergence of legal minds, Saraf and Partners celebrated its Annual Day coupled with Diwali festivities in a grand manner, gathering lawyers, staff, and their families from its Delhi NCR, Mumbai, and Bengaluru locations.

The Firm’s Founder and Managing Partner, Mohit Saraf, delivered an impassioned address, acknowledging the vital support of family members which has fuelled the Firm's remarkable ascent from fewer than 100 to an impressive cadre of 235 members rapidly.

Mr. Saraf elucidated the Firm's forward-looking vision, emphasizing mentorship and relationship-building as cornerstones for cultivating the next leadership echelon.

He also highlighted the transformative impact of Artificial Intelligence on the legal sector and reaffirmed the Firm's commitment to leveraging such advancements for increased efficiency and client service.

The celebration doubled with the announcement of the Firm's strategic expansion, marked by the establishment of a new office in Hyderabad. This significant move underscores the Firm's steadfast commitment to delivering top-tier legal services in the region.

The Hyderabad office will be headed by two distinguished partners, Durga Bose Gandham and Altaf Fatima.

Durga Bose Gandham, an alumnus of NALSAR and a seasoned legal professional, joins Saraf and Partners with over two decades of experience in Litigation & Dispute Resolution. His practice spans insolvency laws, general corporate matters, arbitration, and banking issues.

Durga has an outstanding track record of successfully representing Indian, U.S., Asia-Pacific, and European companies in various legal domains.

Altaf Fatima, a NALSAR graduate with over two decades of extensive legal experience, also joins as a partner in the Hyderabad office.

She is also an Advocate on record at the Supreme Court of India, specializing in General and Commercial litigation, Real Estate, Consumer laws,

Durga Bose Gandham and Altaf Fatima

Employment and Labor disputes, Enforcement Directorate matters, and criminal law-related litigation and advisory.

Speaking about the expansion, Mohit Saraf, Founder & Managing Partner of Saraf and Partners, said, "We’re pleased to welcome Durga & Altaf along with their team to the Firm.

They have worked very closely with me for 4 years. We have a strong and growing client base in Hyderabad, and this expansion will significantly enhance our ability to serve our clients in the region."

In a joint statement, Durga Bose Gandham and Altaf Fatima announced, "We are excited to bring the entire DSK Legal Hyderabad team to Saraf and Partners. This move is a testament to our belief in Mr.Saraf & Firms’ vision and our commitment to our clients."

The addition of the Hyderabad office, led by Durga Bose Gandham and Altaf Fatima, marks a significant milestone in the Firm's mission to provide top-notch legal representation.

With this announcement, Saraf and Partners now proudly boasts a team 235 including 37 partners across its 4 offices in Delhi NCR, Mumbai, Bengaluru, and Hyderabad.

Following the Annual Day celebration, the Partners convened in an extensive one-day deliberation on how to propel the Firm to the next level of growth.

INDIAN ADVOCATE SIDDHARTH YADAV JOINS MAITLAND CHAMBERS IN LONDON

Siddharth Yadav

Maitland Chambers, a London barristers' set, has appointed Senior Advocate Siddharth Yadav as an Associate Member. Siddharth Yadav's primary areas of practice are international arbitration, company law, commercial law, property law, and family disputes relating to wills, probate, and partitions. Established in the late 19th century, Maitland Chambers is a highly regarded set of barristers, renowned for its excellence in advocacy and legal advice. Siddharth was admitted to the bar in 1996. He holds an honours degree in History from St. Stephen's College, Delhi University, and a master of laws (LL.M.) degree from the University of Sheffield in England, where he specialized in international, commercial, and European law. Siddharth commenced his legal career as a trainee barrister in London before returning to New Delhi to join the chambers of a former attorney general of India. Siddharth then started his independent practice and was designated as a Senior Advocate in 2021 by the Supreme Court of India. With over two decades of experience, Siddharth is a highly regarded lawyer known for his expertise in complex and high-stakes commercial disputes. He has represented clients in a wide range of matters, including international arbitration disputes, corporate restructuring transactions, and family disputes. He is also a regular speaker at legal conferences and seminars and a published author on a variety of legal topics. He is a member of the International Bar Association, the London Court of International Arbitration, and the Society of Indian Law Firms.

Siddharth has successfully represented a consortium of Indian banks in an international arbitration against a foreign oil and gas company, and advised a multinational corporation on the acquisition of an Indian company.

DENTONS BOLSTERS BANKING AND FINANCE PRACTICE TEAM WITH THE ADDITION OF PARTNER TOBY GRAY

Global law firm Dentons has appointed Toby Gray as a partner in its Banking and Financial Services team in London. Gray joins Dentons from Linklaters, where he was a highly regarded Capital Markets partner.

Gray joins Dentons with over 27 years of experience at Linklaters, including 18 as a partner. He specialises in complex securitised derivatives, with a particular focus on repackagings, credit-linked notes, and synthetic securitisations. Recognised by the major legal directories as "a market-leading repackaged note specialist and our relationship partner – exceptional" (Legal 500), Gray's work covers the intersection of mainstream debt capital markets and derivatives.

Having spent a significant portion of his career in Linklaters' Asian offices, he also has extensive experience working with Asian, predominantly Japanese, clients to help them overcome cultural, practical, and commercial challenges and complete their most strategically important transactions. Nick Hayday, who leads Dentons' Banking & Financial Services practice in the UK, Ireland and the Middle East (UKIME), said: "We are thrilled to welcome Toby to our team. His extensive experience in structured finance and derivatives, as well as his broad experience in more mainstream capital markets transactions, will undoubtedly strengthen our offering to clients."

Paul Jarvis, Chief Executive of Dentons' UK, Ireland and Middle East region added, "Toby is a very welcome addition to our Banking & Financial Services team. His extensive profile within the industry will bring new opportunities to grow our structured finance team and strengthen our position in the market."

IN CUSTOMS DUTY, UNDER-VALUATION OF GOODS PRICE MUST BE PROVED, ELSE BENEFIT OF DOUBT GOES TO IMPORTER: SUPREME COURT

The Supreme Court has pointed out that the transaction value (actual price paid/payable) for the goods should be the primary basis for customs valuation. Other valuation methods should be invoked sequentially only if there's any doubt.

A Division Bench of Justices B.V Nagarathna and Ujjal Bhuyan added that in such cases, the burden of proof to establish undervaluation is on the customs department.

The Court held, "If the department wants to allege under-valuation, it must make detailed inquiries, collect material and also adequate evidence. If the charge of under-valuation cannot be supported either by evidence or information about comparable imports, the benefit of the doubt must go to the importer. The charge of under-invoicing has to be supported by evidence of prices of contemporaneous imports of like goods."

The appellant had moved the Apex Court challenging the decision of the Central Excise and Services Tax Appellate Tribunal (CESTAT), which set aside the enhancement of the value of imported goods and the penalties imposed on the respondents.

The appellant contended that the respondents under-invoiced the goods and thereby evaded customs duty. They relied on export declarations from the Hong Kong Customs Authority to show that the actual value of the goods was higher than the declared value.

While denying the allegations, the respondents argued that the statements of Yashpal Sharma and Suresh Chandra Sharma, the proprietor and co-director of the respondents' firm, respectively, were not voluntary, and therefore, could not be counted.

However, the Adjudicating Authority (AA) held that the export declarations filed by the supplier before the customs authority were reliable and the declared price was not correct. It held that the goods were liable for confiscation under Sections 111(d) and 111(m) of the Customs Act. However, as those were not available, no order for confiscation was passed.

The order was challenged by the respondents before the CESTAT, which set aside the enhancement of the value of the imported goods and the penalties imposed on the respondents.

The tribunal held that the appellant failed to prove the under-invoicing of the goods by the respondents. It noted that the export declarations from Hong Kong were unattested photocopies, and the appellant did not provide any other evidence in support. It meant the appellant had not followed proper procedure in enhancing the value of the goods.

Though the appellants relied on the statements of the Sharmas, the latter retracted their statements maintaining that those were obtained under duress.

The Top Court observed that CESTAT had taken a correct decision.

The foreign supplier had also filed a second set of export declarations before the Hong Kong Customs Authority showing the correct price of the goods. This matched the price declared in the import invoices. At the initial stage, the department had accepted the second set of export declarations and imposed a penalty on the foreign supplier for price mis-declaration.

The customs department and the AA also relied on the statements of the Sharmas. However, the statements were retracted on the grounds that they were obtained coercively. The Additional Sessions Judge, Delhi, also mentioned in his bail order that the statement of the Sharmas may not have been voluntary.

The CESTAT refused to give credence to their statements and held that the value shown in the first set of export declarations could not form any reliable basis for value enhancement.

Thus, the Court, while observing the relevant precedents and legal provisions, stated that a customs officer was not a police officer and a person summoned under the Customs Act was not an accused. However, a statement made under Section 108 was admissible in evidence and could be used against the person making the statement.

The bench emphasized that the statement must be recorded in a fair and judicious manner, free from duress or coercion.

The Judges quoted Section 14 of the Customs Act, which provides for the valuation of goods. They noted that the price at which the goods are ordinarily sold/offered for sale during international trade was the primary basis for valuation. However, the Central Government was also authorized to make rules for determining the price of goods and fix tariff values for any class of imported or exported goods.

Thus, while dismissing the appeals, the bench upheld the decision of the CESTAT. It stated that the customs department and the AA had wrongly rejected the import invoice prices without sufficient evidence, and their actions were unjustified.

SUPREME COURT: UNILATERAL FEE HIKE BY ARBITRATION TRIBUNAL WOULD NOT DISQUALIFY IT

The Supreme Court has concluded that when an arbitration panel raises its fees without the consent of both parties, it constitutes a violation of the Arbitration and Conciliation Act of 1996. The Court has also established that such a violation does not inherently disqualify the tribunal or necessitate the cessation of its authority.

In this particular case, Chennai Metro Rail Limited (Chennai Metro) awarded a ₹1,566 crore contract to Afcons. Disputes arose during the project, leading to arbitration. The tribunal initially set the hearing fee at ₹1,00,000 per session but later attempted to raise it to ₹2,00,000. Chennai Metro objected, citing a pending issue related to the applicability of Schedule IV of the Arbitration and Conciliation Act. Despite the fee dispute, the tribunal carried on proceedings. Chennai Metro raised concerns about Afcons having paid the increased fee for several hearings, which could prejudice the arbitration. Chennai Metro filed a petition with the Madras High Court under Section 14 of the Act, seeking a declaration that the tribunal's authority was terminated for the disputes. The tribunal members later acknowledged a relevant Court judgment and reverted to the originally agreed fee of ₹1,00,000. The High Court initially halted the proceedings but later rejected Chennai Metro's application, allowing the arbitration to continue.

The division bench of the Supreme Court, consisting of Justices S. RavindraBhat and Aravind Kumar, stated that the decision in the case of Oil and Natural Gas Corporation Ltd v. AfconsGunanusa JV [LQ/SC/2022/1075] is clear in stating that any fee increase must have the agreement of both parties.

In cases of disagreement, the tribunal should either maintain the existing fee arrangement or decline to serve as an arbitrator. However, the Bench expressed the view that a breach of this rule, as seen in the current case where there was insistence on a fee increase despite one party's objection, does not automatically disqualify the tribunal.

The Bench referred to the Arbitration and Conciliation Act, which incorporates the fifth schedule as a disclosure requirement and an eligibility condition in Section 12(1), a continuing eligibility condition in Section 12(2), and absolute ineligibility conditions that render appointments illegal under Section 12(5), aims to eliminate any ambiguities in the process.

It also made an important observation, stressing that the reasons for contesting an arbitrator's appointment under Section 12(3) of the Arbitration and Conciliation Act should correspond with those enumerated in the Act's schedule. They expressed apprehension that deviating from this rule might impose additional demands on the Courts and potentially disrupt the meticulously crafted statutory arbitration process.

The Supreme Court, thus, ruled that Chennai Metro's application could not prevail. The Arbitrators were instructed to recommence the proceedings and adjudicate the case in accordance with the law.

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INDIA'S FINEST GENERAL COUNSEL - LEGENDS

A. SHANMUGA SUNDARAM

General Counsel, ITC Limited

A Shanmuga Sundaram is the General Counsel at ITC Limited. He heads a 60-member strong team, including about 45 lawyers, at the organisation which is a successful conglomerate with a strong presence in about a dozen business verticals.

Besides advising the company and handling a variety of legal issues, he assists in resolving complex deals across all its businesses. In addition, he trains and leads his team, ensuring that it is fully capable of delivering end-to-end legal services to the company. He cut his teeth on writs and other litigation – civil and criminal – at the Madras High Court, before moving in-house. After his foray into the real-estate and petrochemical sectors, Shanmugam joined ITC in 1997.

Shanmugam played a crucial role in closing several acquisition and divestment deals of vital importance to the company. With his nuanced understanding of facts and law, he has been a key factor in the successful closure of disputes in several areas of law, including trademarks, corporate law, taxation, labour and commercial disputes.

BHARAT MEHTA

EVP, Regional General Counsel and Ethics & Compliance Officer - India & APAC Capgemini

Bharat Mehta is the Regional General Counsel and the Ethics & Compliance Officer for India and APAC for Capgemini. He is a key member of the Capgemini Leadership Team in India and is also a member of the Executive Legal Board and board member of Capgemini Asia Pacific Pte Ltd.

He is a strong advocate of governance and actively drives the same as a member of various internal committees in India such as Internal Audit Committee of the Board, Prevention of Sexual Harassment at Workplace, Grievances, Corporate Social Responsibility and Procurement Governance.

Prior to joining Capgemini in 2011, Bharat was the Vice President General Counsel and Ethics & Compliance Officer at Oracle Financial Services Software (formerly i-flex solutions) where he spent nearly 15 years of his professional journey.

BHASKAR CHANDRAN

Group General Counsel, GMR Group

Bhaskar Chandran is the Group General Counsel at GMR Group. He heads the company's legal functions spanning several sectors, including airports, energy and transportation and urban infrastructure. An expert on dispute resolution management, he has been involved in multiple complex arbitrations, both domestic and international.

Having worked with top Indian and international law firms on several complex transactions and litigations, Bhaskar has over three decades of experience in the legal and regulatory fields, particularly, regulatory strategy, corporate governance, legal compliance, secretarial, litigation management and structured transactions.

His prodigious experience in dispute resolution management has earned him several laurels and accolades. He graduated from Madras Law College in 1986 and is a member of the Institute of Company Secretaries of India, New Delhi.

DEBOLINA PARTAP

Group General Counsel, Wockhardt Ltd.

Debolina Partap is Group General Counsel, for the Wockhardt Group. Wockhardt is India's largest integrated pharmaceutical, biotech and healthcare provider. In her current assignment, she is responsible for driving the legal and regulatory compliance system, in-house legal support for banking, joint ventures, mergers and acquisitions, real estate, HR and other corporate matters; formulating legal strategies for legal risk management, litigation management, brands and IP rights management of the Wockhardt group across geographical locations (including India and 60 other countries spread across the globe).

Debolina Partap, who has been in the legal field for over two and a half decades has established a niche in the field of legal and regulatory compliance system, legal risks management and brands & IP rights protection. Her expertise spans banking, joint ventures, mergers and acquisitions, formulating legal strategies, legal and regulatory risk management, litigation management, brands and IP management.

Prior to Wockhardt, Debolina Partap, a Gold Medalist in LLM from Bombay University, worked with IDBI which she joined in 1993. A three-time recipient of Women General Counsel of the Year Award, she is an active legal member of CII and FIICI (Pharma unit) and a much-sought after speaker.

DEEPAK ACHARYA

Group General Counsel/Chief Legal Officer
Aditya Birla Group

Deepak Acharya is the Group General Counsel at Aditya Birla Group. Deepak is a certified Corporate Trainer for various Corporate Training Programs like Corporate Athlete, 7 Habits of Highly Effective People and Coaching for Success. A law graduate from the Government Law College-Mumbai, Deepak is a Fellow member of the Institute of Company Secretaries of India and also an Associate Member of the All India Management Association.
Practicing for more than 25 years in the Fast-Moving Consumer Goods Industry, an experienced lawyer, Deepak has previously worked in various positions for The Procter & Gamble Company in India, Asia Pacific, Greater China, Central & Eastern Europe, Middle East and African Regions.
Earlier he was working as the Chief Risk Officer & General Counsel of Wipro Limited where Deepak was responsible for Legal & Compliance, Enterprise Risk Management, Enterprise Cyber Security, Global Data Privacy and Global Government Relations functions for Wipro Limited.

DEV BAJPAI

Director-Legal & Corporate Affairs and Vice President-Legal (South Asia), Hindustan Unilever Limited

Dev Bajpai has more than three decades of working experience in the areas of legal, corporate affairs, governance & tax. He has worked in multiple industries like FMCG, Automobiles, Private Equity & Hospitality. Mr. Bajpai had a lead role to play in the recent merger of GSK Consumer Health Limited into HUL, the biggest merger of a listed FMCG company into another listed FMCG company in recent times. Mr. Bajpai has been instrumental in advocating lifting of sanctions by the US Administration on Iran based FMCG Companies at the time of the Pandemic in 2020 on the ground that daily needs products like soaps, sanitisers, shampoos & household cleaning products etc. were most required & served as the first line of defence during the fatal wave one of the Pandemic. Mr. Bajpai has been working closely with Trade Associations and has represented Industry before Parliamentary Committees dealing with important regulations. Mr. Bajpai is the Chair of the FMCG Committee of the European Business Group. He is the Chairman of Unilever Nepal Limited, a listed subsidiary of HUL.

DR. VIVEK MITTAL

Global General Counsel, Dr. Reddy's Laboratories

Dr. Vivek Mittal is currently the Global General Counsel at Dr. Reddy's Laboratories Limited (DRL), an NYSE, NSE, and BSE listed multi-locational global generic pharmaceutical giant. At DRL, he leads a team of about 75 lawyers and professionals covering a gamut of activities like domestic and cross-border mergers and acquisitions, in-licensing, out-licensing, commercial agreements, domestic and complex cross-border civil and criminal litigation, arbitration, ethical and statutory compliances, data privacy, and data protection. In addition to his existing role Global General Counsel, Dr. Mittal is also designated as DPO of DRL, he also oversees IPR, employment laws, regulatory issues, and corporate commercial advisory among others.
Dr. Mittal has a very diversified and successful multi-industry career spanning over 23 years with the latest stint being at Danaher Corporation, where he was Regional Counsel - METAI for Diagnostics Platform, Head of Legal at Lupin Limited and has been instrumental in critical roles at Reliance, Radico Khaitan, IndiaBulls, Caparo India and Mount Shivalik.

HEMANT KUMAR

Group General Counsel, Larsen & Toubro Limited

Hemant Kumar is the Group General Counsel at Larsen & Toubro Limited. Skilled in strategic advisory board management, enterprise risk and compliance, complex transactions and litigation, cross-functional leadership, change management, public policy and government relations. Bring a global mindset and strong execution to grow businesses in challenging regulatory environments. Hemant is also a prolific writer and has written several articles on various aspects of corporate law and industrial laws, Mr Kumar has given several presentations at International & National forums on Arbitrations, ADR, cross-border acquisitions, negotiation of JVs etc. He has strong domain knowledge of various corporate laws of India and also has sound working knowledge of laws of different jurisdictions including USA, England, Australia, Africa, France, and Europe & Middle East. He has extensively travelled abroad for various assignments and has sound understanding of the laws and practices in different jurisdictions of the world. Kumar has considerable expertise in foreign investment and FEMA regulations for both in-bound and out-bound investments.
He is a gold medalist in LLB and started his journey as an advocate by conducting many high- profile cases, especially related to the Members of Parliament and Members of the Legislative Assemblies.

JATIN R. JALUNDHWALA

JT President, Adani Group

Jatin R. Jalundhwala is a Commerce and Law Graduate and the Fellow Member of the Institute of Company Secretaries of India. He started his career as Assistant Secretary in Lalbhai Group in the year 1983. His career chart has grown to the position of Vice President–Finance, Company Secretary and Member on Board at Claris Life Sciences in July, 2003.

At present, Mr. Jatin Jalundhwala is Jt President - Legal & Company Secretary at Adani Group, heading the functions of Legal and Secretarial, at Group level. He has an experience of more than 35 years and has been with Adani Group for more than 15 years.

He has worked on variety of subjects like M & A, Indirect taxes, Corporate Laws, Litigations, arbitration, Trade mark, IPR, Joint venture, contracts/ agreements, corporate governance and compliance, dealing with various regulatory authorities like Ministry of Corporate Affairs, Stock Exchanges, SEBI, RBI, etc. He is instrumental in drafting and putting in place various Internal Policies like Insider trading, whistleblower, Anti-corruption, Code of Conduct, CSR and more.

MANJAREE CHOWDHARY

Sr. Executive Director And General Counsel
Maruti Suzuki India

Manjaree Chowdhary is the Sr. Executive Director and General Counsel at Maruti Suzuki India. With over 25 years of experience, she leads a team of 50 experts, working closely with the Board, the CEO and the Leadership team. She provides legal and compliance support in a dynamic regulatory and risk environment at Maruti Suzuki India, a subsidiary of Suzuki Motor Corporation, Japan. Manjaree has worked across South Asia, US, ANZ, and Japan in diverse industries like Industrial, Manufacturing, Auto, Healthcare, Power and Services. Skilled in strategic advisory, listed entity management, complex transactions, dispute resolution, enterprise risk, compliance and public policy, she has led industry initiatives including the formulation of a Voluntary Code of Ethics adopted by the National Healthcare Federation of India. At Maruti Suzuki, she has successfully led change management through incremental steps.

NEERA SHARMA

Chief Executive & Legal Officer
Sistema Smart Technologies Limited

Neera Sharma is the Chief Executive & Legal Officer at Sistema Smart Technologies Limited. She is a University of California, Los Angeles, alumni and an experienced chief of legal with a demonstrated history of working in the telecommunications, real estate and IT industry. She is skilled in negotiations, mergers and acquisitions, corporate law, legal compliance, complaint management, litigations, arbitration, and dispute resolution. With over 24 years of experience, she has worked with several start- ups and developed teams from scratch while handling multiple responsibilities. As a member of the Board of Directors, she has always played a role that goes far beyond her position as a legal adviser. Neera has been working closely with senior business leaders to develop corporate strategies across sthe region and acts as company representative in discussions with the government, the regulators and other stakeholders to help influence the policy decisions. She has been recognised as one of the leading senior counsels of India.

PARVATHEESAM KANCHINADHAM

Corporate Secretary and Chief Legal Officer (Corporate & Compliance), Tata Steel

Parvatheesam Kanchinadham is currently the Corporate Secretary and Chief Legal Officer (Corporate & Compliance) at Tata Steel. His most significant responsibilities include advising the Board on Governance and ensuring that the Members of the Board are ably equipped with resources to discharge their fiduciary duties and corporate governance practices.

Mr. Kanchinadham is also responsible for the Compliance Function of Tata Steel and the legal requirements of the company in the areas of Governance, Anti-trust, Corporate Actions and New Ventures. He also has oversight responsibility of the legal and governance matters of Tata Steel's Investment in Subsidiaries, Joint Ventures and Associate Companies in India and Overseas.

Prior to joining the Tata Group, he served as the Corporate Secretary and Chief Risk & Compliance Officer of Infosys. At Infosys, PK was responsible for the Governance, Risk and Compliance function (including compliance with SEC Rules and Regulations). Mr. Kanchinadham also serves as Member of the CII National Committee on Financial Reporting and on the CII National Committee on Regulatory Affairs'.

RAJBEER SACHDEVA

President, Group Legal, J. K. Organaization

Rajbeer Sachdeva was previously Senior Executive Director and Group General Counsel at DLF Ltd and prior to that worked as a Global - Head Legal with Ranbaxy Laboratories Ltd. He has extensively worked in the domain of Merger and Acquisitions, Competition & Antitrust laws, Real Estate Transactions, Intellectual Property and Trademark matters and Arbitrations in India and abroad. Mr Sachdeva has also been dealing with various matters relating to Insolvency and Bankruptcy Code2016, after successful acquiring a Company under CIRP from NCLT. He is an alumnus of Delhi University with an LLB and LLM and has about 32 years of experience as a Corporate Lawyer. He views the role of a Corporate Lawyer as an advisor to business teams on various intricate matters and legal tasks should be completed meticulously and with precision.

The emphasis should be to effectively handle the transactions and litigations after taking into account the business perspective which is utmost important for taking a final view and to provide solutions to the business team. The role of the Corporate Counsel is a strategic and the advice given to the business team must be practical and business-oriented.

RAJEEV CHOPRA

Managing Director – Legal, Accenture

Rajeev, currently in the 30th year of his career, has been previously associated with several law firms and national and multinational corporates which has shaped his illustrious career. He started his career with private practice in the Delhi High Court, before moving to law firms in corporate commercial practice. He has been the General Counsel and led legal teams in LG, Airtel and Dell, before joining Accenture in 2007. Rajeev believes that fostering a culture of inclusion, fairness, equality and ethical conduct is critical to building strong teams and fostering innovation. Rajeev has led several transformational and change management projects at Accenture. Rajeev was recently recognised by Legal Era as the General Counsel of the year – South East Asia region in 2021. He also bagged several other recognition in the past and is acknowledged as one of the leading “General Counsel” in India. Notably, he was awarded Cheavening Scholarship by the British Foreign & Commonwealth Office in 1996. Rajeev is also

(i) Chair of the General Counsel Sub Committee and

(ii) Member, Task Force on International Legal Services constituted by Confederation of Indian Industry.

VINEET VIJ

Group General Counsel, Tech Mahindra

Vineet Vij is serving as the Global General Counsel of Tech Mahindra Group. Leading a team of 100 passionate and business-focussed lawyers spread across the globe with presence in India, US, Mexico, UK, Netherlands, Israel, and so on, Vineet and team is responsible for taking care of the legal and regulatory aspects to support the organisation’s growth in due compliance with applicable laws that involves supporting multi-billion cross-border commercial transactions, mergers and acquisitions, disputes and litigations, global compliances, legal policy and regulatory, IPR, strategic legal support with the overall responsibility to safeguard the legal & business interests of the company and its principal officers. As part of the overall department structure, the legal teams of group companies worldwide, namely, Comviva Technologies, Born Group, Target Group, Tech Mahindra Business Services, LCC also work under Vineet’s supervision and guidance. Vineet has worked for over 27 years at established IT, ITeS, Engineering, Banking & NBFC corporations. As an independent practitioner he has also worked across variety of practice areas including Commercial and Contract law, Litigation and Dispute resolution, Cross-border M&As, Global regulatory compliances, Financial and Banking laws, Real estate SEZ and STPI regulations, Company law, IT, Data protection, Privacy, Cyber and IPR laws, Criminal law, Telecom, Arbitration, Employment, Bankruptcy, Competition and Indirect tax laws.

INDIA'S FINEST GENERAL COUNSEL

ABHISHEKH KANOI

Head of Legal & Group Company Secretary, PDS Limited

Abhishekh Kanoi is the Head of Legal & Group Company Secretary of PDS Limited. He is a Fellow Member of the Institute of Company Secretaries of India and also an Associate Member of the Chartered Institute for Securities & Investments, United Kingdom. Abhishekh Kanoi holds a Bachelor Degree in Law and Bachelor Degree in Commerce with (Hons.) in Accounts. He is also a Fellow Member of the Institute of Company Secretaries of India. He has rich and diverse in-house corporate experience of over 16 years in Corporate Legal and Commercial Space across various industries like law firm, hospitality, manufacturing, automotive, media & entertainment, fashions and apparel industry and non-banking financial institutions with special reference to emerging technology and convergence. His wide array of specialisation includes Legal Affairs, Corporate Secretarial, IPO & Listing, Regulatory Compliances, RBI & FEMA Matters, Merger & Acquisition, Listing Compliances (India & Overseas Entities), Venture Capital Investments, Cross-Border and Domestic Transactions, Intellectual Property Rights, Copyrights, Media and Entertainment Laws.

AMAR KUMAR SUNDRAM

Former India Head - Legal, Corporate Governance & Regulatory Affairs, NEC Corporation India Pvt. Ltd

Amar Sundram is the General Counsel - Senior Vice President (Legal) and Chief Compliance Officer at NEC Corporation Pvt India. He has been an in-house Senior Corporate Legal Professional, having rich experience in strategic thinking, formulation of operational guidelines and a business enabler to complex legal issues. With over 26 years of experience, he has worked with both Indian and multinational business houses including DCM Shriram, Birla, Tata, AT&T, Reliance, Citi, Ernst & Young and Royal Bank of Scotland. Amar has held senior leadership management positions in many of the organisations that he has worked for.

He has handled high-stake international and domestic mediation and arbitration involving critical issues of law and multi-jurisdictional complexities. He has also spearheaded litigations in the Supreme Court, different high courts of India and the courts in the US. A topper in LL.M from the Campus Law Centre, University of Delhi, Amar has advised corporates on various legal issues in the arenas including regulatory, compliance, taxation, arbitration, insurance, financial laws, employment laws, cross-border transactions, government contracts, technology related laws, power, and criminal law.

ANIRBAN DEB RAY

General Counsel (India), Tata Communications

Anirban is a skilled legal professional with well-rounded experience of over 24 years across sectors in India. In various roles across companies Anirbanhas served, he has managed complex legal issues, acquisition / merger transactions, domestic and international commercial contracts/ deals, legal compliances, critical litigations as General Counsel/Head of Legal and in certain cases as Company Secretary of listed entities.

A business enabler and a legal strategist to the core with proficiency in handling large and complex business operations, Anirban drives process redesign by tech intervention and lead transformational projects to support business growth. He manages scale while evaluating and advising on legal risks in relation to a broad range of complex matters with focus on business continuity, profitability and growth.

Anirban works closely with the business segments and leads large teams of in- house lawyers to deliver results. He has advised on / managed compliance of

/ formulated internal policies on multiple laws applicable to the organization.

AMIT BHASIN

Chief Legal Officer and Group General Counsel
Marico Limited

Amit Bhasin is the Chief Legal Officer & Group General Counsel at Marico Limited. As a part of the Executive Committee, he is responsible for legal and corporate affairs functions at Marico's Indian and international markets and also leads the corporate social responsibility functions. With over 19 years of experience in corporate legal, corporate compliances and governance and legal business partnering, he has worked across organisations in the consumer sector. He plays an active role in the advocacy efforts for the fast-moving consumer goods industry and is part of several industry organisations. Prior to joining Marico, he was associated with Hindustan Unilever Limited as General Manager – Legal and Corporate Secretarial for over 13 years.

He has undertaken multiple roles and worked on several mergers and acquisition transactions and corporate actions. He was part of various global working networks in the areas of competition law, governance and compliance. A Law graduate and a certified Chartered Secretary from the Institute of Company Secretaries of India, in 2011, Amit earned a post-graduation certification in Sustainable Business from the University of Cambridge, United Kingdom.

ARCHANA GUPTA

General Counsel And Ethics And Compliance Officer
Capgemini India And Middle East

Archana Gupta, General counsel and ethics and compliance officer, Capgemini India and ME, comes with over 15 years' experience in legal streams such as employment, labour laws, litigation, ethics and compliance.
Archana advises companies on employment issues, policies and processes; manages whistle blower protection mechanisms; and leads critical investigations under whistleblower frameworks. She has also played an active role in contracts, data privacy, competition law and export control, among others. A qualified lawyer and Certified Fraud Examiner, she holds a diploma in journalism and a certificate from the Society of Corporate Compliance and Ethics.

ARPITA SEN

Head of Business Legal, Associate General Counsel
Intel India

Arpita has over 25 years of experience as an Attorney and over 20 years of experience as a designated General Counsel, Compliance Officer. She has held leadership positions as a trusted management advisor with required leadership skills for heading and managing a corporate legal, compliance and ethics function as also managing inter-company legal relationships. She also has expertise in providing strategic and practical legal advise, providing suitable legal options best suited for business/ commercial strategy, being a trusted advisor, problem solver.
Recently in 2021-2022, she led a USD 1.2 Billion divestiture of healthcare services of an Indian public listed company including appointing Big 5 counsel across 4 geos, heading the entire reliance based legal DD for the org, negotiating and finalizing transaction documents and disclosures in a complex asset cum stock transfer deal. The List Co had upwards of 20 subsidiaries across the world.

BIJOYA ROY

General Counsel, Pernod Ricard India

Bijoya Roy has spent over two decades in the profession gathering experience across the globe. From her early days in Mumbai working for companies like Tata Housing, Asian Paints and Kodak, Bijoya went on to qualify as a Solicitor of England and Wales in 2008. She joined Thomson Reuters and spent 10 years with them, first as a senior lawyer in their EMEA team, based out of London and later being posted in Dubai supporting the global emerging markets of India, China, ASEAN, Latin America, Middle East, Africa, Russia and parts of Europe. Ms. Roy returned to India in 2019 to join Flipkart as their Group General Counsel. Her experience has seen her manage teams spread across geographies, some large and in excess of 50 lawyers and some much smaller. During the course of her professional journey, Bijoya has specialised in European Competition Law, technology laws and litigation strategy. Thriving in complex environments, her professional journey has taken her from real estate to data and technology, e-commerce and the consumer industry. From handling high-powered litigations with claims in excess of Euro 60 Million to tackling FDI-related existential crisis', the Enforcement Directorate and Competition Commission investigations into the e-commerce sector, Ms. Roy has had a rewarding experience of honing her skills as an astute legal professional.

DAMINI BHALLA

General Counsel, Zomato

Damini has been the lead counsel on several Indian and cross-border transactions. Zomato's listing involved dealing with several legal nuances under SEBI listing regulations. Additionally, she along with her team worked round-the-clock on all aspects of the Prospectus with various internal and external stakeholders to make the Zomato listing possible in record time.
With all these efforts and more, Zomato achieved the unique feat of being the first Indian unicorn to be listed on the stock exchanges. The success of Zomato's listing has paved the way for other Indian start-ups working in e-commerce, digital economy and technology space and provided them with the necessary impetus to explore listing in India to scale their businesses further. Over the last year, supported by external counsel, the Zomato legal team has been instrumental in risk-based assessment and implementation of the acquisition of Blinkit, formerly Grofers, as well as minority investments in Mukunda foods, Urbanpiper, Adonmo, Curefit, Shiprocket and Magicpin.

DEEPIKA CHAUDHRY

Executive Director Legal- APAC, Xerox, India

Deepika Chaudhry is the Executive Director – Legal at APAC Xerox, India. She is a seasoned professional with a successful track record of executing strategic leadership roles across legal, compliance, public policy and government policies. She has been managing Asia-Pacific (APAC) and global roles across diverse industries including services, information technology, telecom, insurance, consumer products and manufacturing. An experienced advisor to the Boards, she possesses an extraordinary ability to manage shareholder and joint-venture partner relations in addition to being a trusted business advisor. She successfully partners with business teams and has deep knowledge and expertise in commercial transactions, corporate, mergers and acquisitions, litigation, intellectual property, FCPA, UK Anti-Bribery, and country specific compliance and regulatory laws across the US, the UK and APAC countries. Deepika's experience of working across nationalities and diverse cultures has enabled her to nurture talent and building high performance teams across geographies, skills and cultures. Throughout her professional career, she has received recognitions and awards including being felicitated with Female General Counsel of the Year Award by Legal Era (2014) and recognized by ICCA publications (2017 and 2019).

DIVYA KUMAT

Executive Vice President, Chief Legal Officer & Company Secretary, Datamatics Global Servcies Limited

Divya Kumat has more than 23 years of enriching experience as Group General Counsel and Company Secretary. As Company Secretary of a listed entity, Divya has formulated and successfully implemented various policies like Contract Management policy, Insider Trading policy, Whistle Blower policy, Investor Grievance policy, Prevention of Sexual Harassment policy to name a few.

Keeping pace with the digitally enhanced organization, I championed a bespoke contract management system and automated contract management for the Group. In her current role as EVP, Chief Legal Officer & Company Secretary, Divya leads all the legal and secretarial initiatives for more than 41 Group companies worldwide with the support of an able and efficient team.

DR. AKHIL PRASAD

Director, Country Counsel India And Company Secretary Boeing India Private Limited

Dr. Akhil Prasad is currently a member of the board of directors of entities in Boeing Group and an Advisory Board Member (Honorary), UPES School of Law. Having over 28 years of experience, his legal expertise goes beyond the Indian shores in the UK and the US and he has worked with Fidelity Worldwide Investment, The Walt Disney Company India, General Motors India, Electrolux Kelvinator, Xerox India and Modicorp and Essar Group(s). He holds numerous degrees including a Doctorate in Law and a Doctorate in Commerce. He is a Fellow Member of the Institute of Chartered Secretaries and Administrators, UK (FCIS) and the Institute of Company Secretaries of India (FCS); a non- practicing Solicitor of England & Wales; a Masters of Law (Honors) program from the Northwestern University and a Certificate in Business Administration program from Instituto de Empressa, Madrid, Spain (IE), USA; leadership training under the program "Leaders Shaping Our Future", conducted by Boeing Leadership Center, USA; and is an alumni of the Wharton Business School.

DR. MUKUL SHASTRY

Vice President, Welspun Group & Head Legal Welspun Enterprises Limited

Dr Mukul Shashtry, General Counsel & Executive Director at Cube Highways. He has 20 years of experience and is adept in Business Strategy (Commercio-Legal), Corporate M&A, IBC Processes, PPP Infrastructure projects, Claim management, Litigation management, Legal processes (both civil and criminal), Arbitration including International Commercial Arbitration, Compliance with RBI, SEBI & MCA rules & regulations, Trade & Competition Law, General Corporate Laws. He has previously worked with in In-House roles with organizations such as Welspun Group, Adani Group, KEC International Ltd. He has also worked with the RBI as Legal Counsel. During his stint at RBI, he has advised RBI on policy issues on topics spanning across Banking operations, Payments & Settlement Systems, and foreign exchange; drafted and vetted international contracts between RBI and foreign entities; represented and defended RBI in multiple forums - Tax authorities, Finance secretary, GoI, and Central Information Commission. He was also an adjunct member of RBI Faculty, conducting sessions for Bank officials on dealing with Legal and Regulatory issues in Banking & Finance domain.

DR. SANJEEV GEMAWAT

Group General Counsel, Vedanta Group

Being one of the founders of the GCAI, Dr. Sanjeev Gemawat has been encouraging the cause of General Counsels' statutory recognition. Traversing through wide-ranging industries like automobile, real estate, hospitality and manufacturing, his experience graph touches three decades. He was previously associated with Indian and multinational corporates like Dalmia Bharat, DLF, JCB & others.

Dr. Gemawat is a post graduate and doctorate in law, a qualified Chartered Accountant, Cost Accountant and a Chartered Secretary from India & the UK. He has been honoured as Top General Counsels of India by various prestigious institutions. Honoured as one of "India's finest in house counsels", the "Most Influential Corporate Counsel and Company Secretary" he has also been inducted to "Global Hall of Fame" for his contribution in the Legal Eco System in India and beyond.

"It is high time that the Government should formulate a code of conduct for non-litigious services which can prescribe rules relating to competence, independence, integrity, conflict of interest and confidentiality," expresses Dr. Gemawat.

JOGINDER YADAV

Associate General Counsel & Director-Legal,
India & SAARC, Cisco

Joginder is the Legal Director & General Counsel for Cisco India & SAARC. He is responsible for legal support to the regional sales, engineering, and strategy & operations organisations. Joginder has had a stint with Cisco during 2007-08 with its Services & Globalization legal team, where he supported senior executives in the Service Provider segment, as well as strategy for mega deals in Asia, Middle East and other emerging markets. He also contributed to Cisco's globalization efforts as an initial member of its Globalization Center, East in Bangalore.

He has over 20 years of global legal and business experience at leading law firms, legal departments, and the legal process outsourcing (LPO) industry, with diverse exposure across regulatory, litigation, M&A, general corporate affairs and large deal negotiations. He also has experience running a business vertical for a leading global LPO.

In the past, Joginder was Senior Vice President of Contract Solutions at UnitedLex, Nokia Siemens Networks (NSN), IBM and Sun Microsystems in regional legal roles. He also worked as a foreign associate for over a year at the leading Japanese firm TMI Associates.

His law firm experience includes working at the Indian firm Kochhar & Co., where the main focus was dispute advisory, foreign investment and regulatory as well as infrastructure sector work including power, energy and insurance.

JYOTI PAWAR

Group General Counsel Legal & Corporate Affairs
Microsoft CELA India, Microsoft

Jyoti Pawar is General Counsel for Microsoft India, leading the Corporate, External, and Legal Affairs (CELA) team that focuses on commercial transactions, litigations, compliance, regulatory, government and industry affairs. In this role, Jyoti is a trusted advisor and enabler to Microsoft India senior leaders and their diverse business establishments, driving initiatives in the areas of technology policy and regulation, trusted cloud and responsible AI, data privacy and cybersecurity, ethical culture and compliance governance, IPR, and related areas. Prior to this, Jyoti was global head for transactions, contracts, litigation & insurance for Infosys Limited. She started her legal career as an advocate with Mulla & Mulla and Craigie Blunt & Caroe – Advocates & Solicitors (from 1992 to 2000) and subsequently worked with GE Capital India and Bharti Airtel Limited. She is a qualified solicitor in England and Wales and also a member of The Bar Council of Maharashtra & Goa, The Bombay Bar Association and The Law Society of UK.

She has held significant positions in various committees such as the President of the Legal Committee of the Cellular Operators Association of India (COAI), Member of the Financial Inclusion Committee at FICCI, POSH Committee for Sukino Healthcare, CII regulatory committee etc. She has also practiced law, as Partner-in-charge of Economic Laws Practice (ELP), Delhi and Head of Telecom Media & Technology Practice and later as founding partner with JPA.

KANAIYA THAKKER

SVP (Head Legal), Adani Enterprise Ltd

After a successful journey of 9 years, working for Holcim India (Ambuja Cements Ltd.) I have joined the flagship entity of Adani Group i.e. Adani Enterprises Ltd as SVP - Head Legal for Natural Resources Business.

Journey at Holcim India was quite enriching. Under the able guidance of Board of Directors and Holcim Group, successfully achieved multiple milestones on high stake litigations like CCI, Sales tax Petcock, environmental issues, potential M&A, etc, also implemented some of the best compliance & legal processes.

At Adani Enterprise, I will be heading the Legal function of the Natural Resources business which comprises of Integrated Resource Management, Coal mining and trading, Cement and aggregates, Iron Ore, Copper, Bunkering and ATF.

KANIKA SHAH WADHWA

Legal Director and Senior Counsel (Head of Legal)
GlaxoSmithKline Asia Pvt. Ltd.

Kanika Shah Wadhwa is the Legal Director and Senior Counsel (Head of Legal), at GlaxoSmithKline Asia Pvt. Ltd. and is responsible for leading the legal and secretarial function for the India Subcontinent. She has been involved in many complex cross boarder transactions including the amalgamation of erstwhile
GlaxoSmithKline Consumer Healthcare Limited and Hindustan Unilever Limited (HUL), in the divestment of nutritional portfolio in Bangladesh and setting up a distribution set up with HUL in India for GlaxoSmithKline's consumer healthcare products. She adeptly managed to work with multiple stakeholders in different jurisdictions and time zones, during the lockdown.
Her ability to carry the team with tenacity and calm during the most stressful times during the entire transaction has been recognized at global platforms within the GSK system. Her team has been recognized as an enabler for business and digital transformation. The legal team developed a chatbot to help clarify internal policy - related issues.

KAPIL CHAUDHARY

General Counsel, Junglee Games India Pvt. Ltd.

Kapil Chaudhary is an established and reputable legal, privacy & technology professional with over two decades of experience in General Counsel leadership roles, advising on a wide-variety of risk, technology and commercial issues. He's served in Legal leadership roles across companies like Schumberger, IBM, Autodesk and Twitter.
He has been associated with the International Association of Privacy Professionals (IAPP) and is a Fellow, Singapore Institute of Arbitrators.
As General Counsel for Junglee Games since 15 November, 2022 he is a part of the international Legal and Risk team at Flutter International, he currently leads the Legal, Risk, Regulatory and Policy function at India's fastest growing online skill-based company.

KAUSHIK MUKHERJEE

President Legal, Indiabulls Housing Finance

Kaushik is a corporate lawyer and senior in-house counsel with diverse experience across practise areas including capital markets, mergers and acquisitions, structured finance, real estate project financing, restructuring, and corporate and securities advisory and disputes. Kaushik has been a capital markets and public M&A partner with leading Indian law firms including Shardul Amarchand and JSA Law, amongst others. As an in-house counsel, Kaushik's repertoire includes structuring and execution of commercial transactions. Additionally, he oversees all regulatory matters ranging from simple advisory in relation to compliance to strategizing (with external counsel or otherwise) in connection with investigations and disputes. He has regularly advised on queries raised by the Reserve Bank of India and the National Housing Board in relation to periodic inspections conducted by such regulators. Kaushik has multiple publications under his name including a National Stock Exchange (of India) publication on corporate governance (as a special advisor), apart from authoring articles in leading financial dailies including the Economic Times and the Financial Express.

KUMAR ANKIT

General Counsel and Vice President Shree Cement Limited

Kumar Ankit is an esteemed legal professional with a distinguished career in the corporate world. Since May, 2023 he holds the position of General Counsel and VP Legal at Shree Cement Limited, one of India's leading cement manufacturing companies. As a key member of the senior management team, Ankit plays a vital role in overseeing various critical aspects of the company's legal affairs.
With his vast experience and expertise, Ankit efficiently manages corporate legal matters, litigation, risk management, ethics, compliance, and inorganic initiatives for the organization. His contributions extend to advising stakeholders on a broad spectrum of domains, including mining, environmental regulations, natural resource extraction, electricity, project and incentive planning, land acquisition, ESG (Environmental, Social, and Governance) issues, competition law, revenue, and public-private partnerships (PPPs) in the infrastructure sectors.

LAKSHIKA JOSHI

Associate GC, Capgemini Americas And Lead IP Counsel, Global, Capgemini Engineering

Lakshika has been awarded the Thompson Reuters ILA WILL (Women in Legal Leadership) Power Award 2017. She appears in the List of Top Powerful Women in Law by World IP Forum. She headed the Content Licensing and Syndication business for The Times of India Group. Her latest podcast on deciphering IPR & Licensing is available on Audioboom @ ITunes.

LAKSHMI MENON NAIR

Director And Associate General Counsel, Head Of Legal - India Geo, Hewlett Packard Enterprise

Lakshmi is a General Counsel (with global and local experience) with a demonstrated experience of providing practical, outcome oriented advise to technology companies from medium sized to large Fortune 500 companies. She has advised on complex cross border commercial transactions, technology laws, mergers, acquisitions, divestitures, employment laws, data protection laws, intellectual property laws, trade laws, insurance laws, antitrust issues, dispute management, facilitated corporate secretarial matters, corporate governance, real estate laws, environmental laws, business code of conduct issues and risk/compliance management.
She has experience managing large and small agile teams with a focus on driving excellence and elevating performance by creating an inclusive environment for team members. She is a member of several Diversity, Equity and Inclusion ERGs in her present organisation and drives strategic initiatives for these groups.

LUBINISHA SAHA

General Counsel India & South Asia, Airbus

Lubinisha Saha is currently the General Counsel, India & South Asia for Airbus. Earlier she was working with GE Renewable Energy as the General Counsel. Before that she was the General Counsel for Baker Hughes, a full stream oil and gas company in India and part of the US conglomerate GE.
She has rich experience with leading global organisations and law firms and has handled a variety of commercial issues with a focus on infrastructure, commercial contracting, structuring, financing, M&A, compliance, trainings and policy making. She is known to be a business partner who owns issues and collaborates effectively with varied stakeholders to provide risk abated yet business enabling solutions.
While at GE, she has enabled business and led various strategic initiatives for the India region including the simplification of commercial processes, channel partner management, product segmentation risk mapping and commercial trainings.

MALAV DELIWALA

Head – Legal, Adani Power Ltd. & Adani Transmission

Malav is the Head - Legal at Adani Group. He has been an In-house counsel to Adani Group for more than 12 years and has been part of unprecedented litigations.
Malav has provided corporate consulting in a wide range of legal issues viz. Electricity laws, Corporate laws, Environmental law and also Court practice and procedures. He specializes in providing strategic advice on handling litigations in Supreme Court, High Courts, Commissions, Tribunals and other Courts /Authorities for resolving critical legal issues.
Malav has been involved in rendering strategic advice to the group in their bids to acquire stressed assets per the resolution process prescribed under the Insolvency and Bankruptcy Code (IBC).
He is an effective communicator with good relationship skills and is adept at liaison, maintaining cordial business relations with legal counsels and other external agencies.

MANISH LAMBA

General Counsel, DLF Cyber City Developers Ltd.

Manish Lamba is the General Counsel at DLF Cyber City Developers Limited. Having done his Bachelor of Law from the University of Delhi, he attained a rich experience of over 25 years in the areas of corporate laws advisory, litigation, commercial matters, capital market, intellectual property, corporate restructuring and compliances. Prior to joining DLF, he worked as a General Counsel with Bharti Realty Limited, Bharti Retail Limited and as Vice President – Corporate Legal at Bharti Enterprises Limited. He was General Manager – Legal at Bharti Airtel Limited and a Senior Associate at Vaish Associates.

Later, he moved to the corporate world and became the In-house Legal Counsel of Coca-Cola. Subsequently, he got associated with Bharti Group and worked for their telecom, infrastructure and real estate retail sectors. Manish regularly delivers lectures on arbitration, corporate restructuring, compliances and legal reforms at meets. He has represented the industry on various forums and actively participated in the Legislative Consultative process.

MOHIT KAPOOR

Executive Vice President & Head Legal
SBI Card & Payments Services

Mohit is a dual-qualified lawyer with varied experience in litigation and corporate matters, spanning multiple industries and geographies. Having begun his career practicing at premier law firms, Mohit has handled a variety of matters ranging from indirect tax, consumer, antitrust, intellectual property and product liability laws, while engaging and working extensively with India's senior-most counsels. He then successfully transitioned to more transactional and advisory roles by gaining rich experience working at different organizations including foreign law firms, global insurers, international HR consultants, leading banks, and NBFCs.

Mohit has more than three decades of experience and has held various responsibilities in various organizations and has been exposed to a variety of experiences including providing timely and cost-effective legal support to businesses against aggressive schedules and budgets, liaising with the Board of Directors, shareholders and regulators.

NAGENDRA PAL GOEL

Executive Director – Legal & Company Secretary
Ingram Micro India Pvt. Ltd.

Nagendra Pal Goel is a well-recognised professional in the field of Corporate law with a plethora of experience spanning over two decades. In addition to holding a degree in Commerce and Law graduate from the University of Delhi, he is also a Fellow Member of the Institute of Company Secretaries of India. Nagendra specialises in Corporate Law & Governance, Company Law, Contracts, Compliance & Business Ethics, Litigation & Employment Law. His experience also extends in the fields of Banking and Insurance & Economic laws.

Joint Venture, Mergers & Acquisitions & Greenfield Projects are his passion and an integral part of his successful career. His career spans over 24 years during which he has worked with several diverse industries like FMCG, B2B, Beverages and even been a part of the Chemical, Pharmaceutical & Manufacturing industry. He has been employed in various capacities in both multinational and Indian companies, like Jindal Photo Limited, Valvoline Cummins Limited, Ashland India Private Limited & ISP India Private Limited.

NAVITA CHAUBAL

General Counsel & Senior Director, Target

Navita is a solution focused legal & compliance professional with 26+ years' rich experience in overseeing daily legal & compliance functions pertaining to regulation and standards. She is adept at understanding business operations & needs, mentoring teams to align with business requirements, conducting audits, verifying operational efficiency, evaluating internal control systems and recommending ways of improving internal controls.

Navita is proficient in managing legal groups/ teams, Knowledge Management, legal project, investigating various cases and maintaining records. Focused and hard working with proven capability in discovering critical legal points in complex litigation and ability to easily grasp complex situations. Rich exposure of working with international clients/ teams in SE Asia, Germany, Netherlands, Denmark, Italy, USA, UK, China, Austria, Belgium, Spain, etc. Skilled in managing multiple projects simultaneously ensuring compliance. She has strong analytical, problem solving skills coupled with relation building skills with internal/external bodies & excellent negotiations skills.

P. ASHOK KUMAR

General Counsel, ArcelorMittal Nippon Steel India Limited

India qualified in-house lawyer having 18+ years experience with good commercial knowledge and flair for technology. Areas of expertise include complex telecom & power infrastructure projects; Contract structuring, negotiation & finalization; Contract- Risk & Claim Management; JVs, Consortiums and M&As; project financing, marketing & supply support, real estate, investment and exchange control; employment & immigration laws; other Corporate and Commercial Laws.
Special focus on various models of Thermal, Solar PV, Solar Thermal, Bio-energy, transmission and distribution EPC contracts including FIDIC and Bespoke models

PANDURANGA ACHARYA

General Counsel, Zepto

Panduranga Acharya is a seasoned legal professional and a veteran in the ecommerce industry. He is solution-oriented and a great decision maker. He has led complex transactions and highly performing teams in his career. His vast experience on sectoral regulatory issues is outstanding. Panduranga has built high performance teams and has demonstrated great legal leadership in various organisations. Panduranga is a Law graduate from Bangalore University. After a brief period of court practice, he worked for various corporations. He carries 18 years of post-qualification experience as in- house counsel and has been associated with Mobile Store, Videocon, Vodafone, Flipkart, Swiggy and CarDekho Group. His core competence includes, M&A Transactions Advisory, Business Structuring, Regulatory Compliances, Policy Advocacy and Real Estate Transactions. He is a regular speaker on diverse legal topics and has been co-chair for FICCI Online Food Aggregator Working Group and currently Executive Committee Member, e-Commerce Law Sectionat INBA and member of CII National Committee on Regulatory Affairs.

PATHIK ARORA

General Counsel, Senvion Wind Technology Pvt. Ltd.

Pathik Arora is an ardent legal professional with over 22 years of advising and servicing the market leaders in varied spaces like chemical and petrochemicals, information technology, real estate & construction, hotels & hospitality, renewable energy, infrastructure, health care, private equity and so on. He is also a fellow member of the Institute of Company Secretaries of India.
His experience of working in-house at leadership roles as well as in law firms extends across jurisdictions. It covers a broad spectrum of legal, secretarial, estate management, compliance & governance practice which includes strategic & business advisory, structuring complex commercial transactions incl. cross- border M&A, due diligence (corporate & real estate), real estate acquisitions & investments, PPP, financing (including project financing), risk assessment, setting up robust compliance programs encompassing FCPA, UKBA, POSH, litigation management and so on.

POOJA SEHGAL MEHTANI

General Counsel, Sun Life Global Solutions

As the General Counsel and a member of the leadership team, she is responsible for leading Legal and Corporate Secretarial affairs at Sun Life Asia Service Centres, in addition to heading the Information Technology Contracting Centre, the Knowledge Services Legal Vertical, which provides legal support to various geographies on technology contracts. She is responsible for shaping legal strategy with the rapid advancements in the IT/ ITES industry, is focussed on Corporate Governance and is a key contributor to organisational planning and the decision-making team. She remains passionate about leveraging technology for automation and digitisation of Legal and Corporate Secretarial processes. She advises leadership and management not just on law and related matters but helps shape discussion about business issues. She renders support and advisory for driving various organisational and functional initiatives for transformation and innovation and towards building a future-ready organisation. She is also the Diversity, Equity and Inclusion representative of Sun Life Asia Service Centres.

POORNIMA SAMPATH

SVP & Chief Legal Officer, Tata Digital

Poornima leads the legal and regulatory matters for Tata Digital. Previously, she was working with Tata Sons as Vice President - Group Legal.

She has also worked with Intel Capital as Senior Attorney, where she spent a few years handling legal matters across a diverse portfolio of venture capital investments in India, Asia-Pacific and the United States. Prior to Intel Capital, she worked at Weil, Gotshal & Manges LLP in New York, focusing on M&A, private equity and restructuring matters.

Poornima is admitted to practise law in New York, India and the United Kingdom (non-practising solicitor).

PULIN KUMAR

Sr. Legal Director, Adidas (India)

Pulin Kumar is presently working as a Senior Legal Director of Adidas (India). He has an extensive exposure of handling high stake cases in various High Courts and the Supreme Court. He has had an illustrious tenure as an in-house counsel dealing with commercial matters and other matters. He has extensively worked on the issues related to the Mutual Legal Assistance Treaties (MLAT) and Extradition Treaties with various countries and interacted with the legal counsels located at across the globe. During his tenure with various organisations, Pulin has also been involved in execution of the foreign contracts and high-stake international commercial arbitration. Pulin is actively involved with various regulatory groups of business houses. He looks after the legal and compliance functions of adidas India and Reebok India. His professional journey started as an in- house counsel from Indian and MNC conglomerates like Montari Industries, Triveni Engineering, Ambuja Cements, New Holland Tractors, Jubilant Organosys and Samsung India. During his tenure as the Legal Head for Samsung India, he initiated a legal case fighting against the menace of Parallel Imports which today is pending in the Supreme Court. Pulin has been rated amongst top 50 General Counsels by LEGALERA magazine in 2016.

RAJIV CHANDAN

Global General Counsel & Company Secretary
Tata Chemicals Limited

Rajiv Chandan is a corporate lawyer and a Governance Professional. He has a masters' degree in Commerce and a Law degree from the University of Mumbai. He is also qualified Company Secretary from The Institute of Company Secretaries of India.

Rajiv is with Tata Group since 2007 and he is a Key Managerial Person in Tata Chemicals Ltd and designated as Global General Counsel & Company Secretary. Being a member of Management Committee, he heads the Legal, Corporate Governance, Compliance and Company Secretarial functions of the Company head quartered in Mumbai and its subsidiaries based in India, America, UK and Africa.

Rajiv has over three decades of experience in the areas of Legal, Regulatory, Compliance, Corporate Governance and Mergers & Acquisitions including cross border His experience is spread across diverse industries and sectors, including paper, automobiles, logistics, cement, chemicals, FMCG and fertilizers. Rajiv is also representing his company in various Legal affairs committee of industry bodies such as CII, FICCI and BCCI.

RAJIV CHOUBEY

Group General Counsel, Dalmia Bharat

Rajiv Choubey is the Group General Counsel at Dalmia Bharat. Till recently and before joining Dalmia Bharat, he was the Chief Legal Officer at ACC Limited & Ambuja Cement Limited where he headed the legal, secretarial and compliance functions, which was part of Holcim, the world's largest cement and building materials company. At ACC & Ambuja, he advised the management on the entire gamut of business activities including corporate laws, mining, environment and competition laws, commercial and industrial laws, mergers and acquisitions, governance, risks and compliance. He was also a member of the Executive Committee of the ACC & Ambuja.

He is an alumnus of the Faculty of Law, University of Delhi, the Indian Law Institute, the Indian Society of International Law, New Delhi, and the Institute of Company Secretaries. He was also a director and board member of Bulk Cement Corporation of India, Lucky Minmat Limited, Singhania Minerals Private Limited and other joint-venture companies of ACC and the Madhya Pradesh State Mining Corporation Limited.

RAKESH PRUSTI

General Counsel, OYO

Rakesh Prusti is an experienced General Counsel (GC) with over 26 years of successful history of working in diverse industries and complex ecosystems across geographies. A transformational change enabler, he is a problem solver, a firm believer in empowerment and is known for inspiring and enabling his team for superior performance. Mr Prusti is the Group General Counsel at OYO, a technology platform that empowers the large yet highly fragmented global hospitality ecosystem. Trusted by his business partners and stakeholders for his complex problem-solving abilities, Mr Prusti is a key member of the leadership team at OYO. He is also a member of the Risk Management Committee and the boards of group companies at OYO.

Over the last 17 years in GC Roles, Mr Prusti led global and domestic strategic and inorganic initiatives, managed cross- border mergers & acquisitions, financing, high-stakes dispute resolutions, enterprise risk management, board management, corporate governance and compliance framework, international legal strategy, key policies training, corporate restructuring and policy advocacy.

RICHA SINGH

General Counsel, Medanta Group of Hospitals

Currently at Medanta, Richais part of the senior leadership team and carries expertise in Corporate Affairs and Contract Management, advisory to the Board and Senior Management, Regulatory and Policy Affairs, Risk Mitigation and Litigation Management, Intellectual Property Management and Protection.

Richa has substantial experience of structuring, drafting, negotiating and closing complex commercial transactions across various business verticals in a complex regulatory landscape. Expert in general corporate, joint ventures, acquisitions, employment and real estate matters, her approach is focused on protecting and balancing legal, compliance and governance aspects in any transaction while enabling the business and commercial objectives. While doing that, the effort is also to seek continuous improvement and achieve highest level of operational and ethical integrity in the system.

ROHIT ANAND

Director, Legal Affairs
Caisse de depot et placement du Quebec (CDPQ)

Rohit has more than 12 years of experience advising on a wide range of corporate finance transactions including acquisitions, strategic sales, joint ventures, IPOs, private placements, exits, share repurchases and other corporate advisory work in India and South East Asia.

Before joining CDPQ, Rohit was working as the Assistant General Counsel at Flipkart. He has also law firms such as Herbert Smith Freehills and S&R Associates.

ROOPESH JAIN

Deputy Vice President, Johnson Controls
Hitachi Air Conditioning India Limited

Roopesh is a commerce and law graduate. He is also a qualified Company Secretary and Cost & Management Accountant. He has more than 25 years' experience advising businesses in Legal, Compliance and Taxation matters in his role as General Counsel with several reputed companies like Hitachi, Daikin, Menarini, Lloyd, SPL etc. in Consumer Durables, Pharma, Oil and Gas, Construction and Finance sectors. He has wide experience working with Indian entrepreneurs and MNC's engaged in Manufacturing as well as Services sectors.

Roopesh is currently working with a BSE NSE listed and American-Japanese Joint Venture - Johnson Controls Hitachi Air Conditioning as its General Counsel, and designated as Deputy Vice President – Legal & Secretarial. He is based in Ahmedabad.

SACHIN KALRA

Vice President, Legal & Regulatory Affairs, HT Media

Sachin Kalra is the Vice President & Deputy General Counsel at HT Media Limited (Group). Having pursued his Master's degree from Bharati Vidyapeeth, Pune, he completed post-graduation and joined as a faculty of law with the same university. Soon, he decided to take up law as a career and became a practicing lawyer in litigation. Subsequently, he specialised in corporate law and intellectual property rights law.

In his prior assignments, Sachin headed and represented the legal functions of Bharti AXA, Bharti Retail, Samsung (South- West Asia), Vodafone India. He possesses a wide experience of handling a diverse range of legal matters in different industries including insurance, telecom, FMCG, retail, real estate, electronics, consumer durables, education and media. He has always been open to challenges and learning and never hesitated in taking up new tasks in any sphere. However, with a penchant for research and a love for academics, he continues to hold a keen interest in interacting with and tutoring law students on a wide array of subjects beyond the rote learning of textbooks.

SAIKAT SARKAR

Global General Counsel, Eicher Motors Limited

Saikat Sarkar is a legal professional with over 24 years experience. He is currently heading the Legal function of Eicher Motors Limited supporting businesses with over USD 1.25 Billion Net Revenue.

He has actively worked to expand his experience, both professionally and personally. In his early career, Saikat worked in Private Practice before the Calcutta High Court. Later, he worked with Hindustan Unilever Limited (2000-2004.) In 2004, he joined Hindustan Coca-Cola Beverages Private Limited (HCCB) which saw him work & relocate to various cities in India like Kolkata, Mumbai, Gurgaon & now in Bangalore. Saikat has worked across India both in Operation and Corporate roles. In 2015, he assumed the position of General Counsel (Vice- President) for Malaysia, Singapore, Brunei & Myanmar. Later in February, 2020 he relocated to Bangalore, India as Associate General Counsel.

SAMEER CHUGH

Chief Legal Officer & General Counsel Play, Games24x7

Sameer, with over 26 years of experience, leads the company's legal, compliance and secretarial function. He holds a degree in Law from Symbiosis Law College, Pune. He has also completed the Masters in Marketing Management from SIMS, Pune followed by MSc in Telecom Business from UCL, London, UK.

Sameer has worked with leading Indian law Firms including Cyril Amarchand Mangaldas & Kochhar & Co. He has worked as the India General Counsel with companies such as NCR Corporation, BT Group, Essar Group and Cummins. He was the Director – Legal & Regulatory for Bharti Airtel before taking over as the Group General Counsel of Bharti Group

SAMEET GAMBHIR

Vice President (Corp. Law) & Company Secretary
DCM Shriram Ltd.

Sameet Gambhir, FCS, LLB is a Senior Corporate Legal & Risk Management professional and Company Secretary with around 30 years of industry experience and is presently Vice President (Corp. Law) & Company Secretary of DCM Shriram LTD, New Delhi, Sameet's expertise includes Regulatory & Corporate legal matters, Corporate Governance & Compliances, Corporate restructuring, M&A, RBI & FEMA matters, SEBI Regulations, Risk management, IPR matters, brand protection, data privacy issues, due-diligence, and investigations ESG, Industrial & labour Laws, Contracts & Agreements, litigations. He also carries vast experience in Corporate Secretarial matters including handling Board meetings, Committee meetings and shareholders meetings.

Sameet is enlisted as one of the "Top In-house Counsel" by Forbes India in its Powerlist-2021. He is also recognised in GC Powerlist India-2022 released by The Legal500. He is the Co-Chairman of the Corporate Affairs committee of PHDCCI and also a member of National Committee on Regulatory Affairs of CII. He is also a member of Board of Study of GD Goenka Law School.

SHEEL SINHA

General Counsel & Head (Legal, Compliance & Ethics), JLL India & South Asia

Sheel R. Sinha holds a Bachelor of Economics (Hons) and Bachelor of Laws from Campus Law Centre, Delhi University (2002). He currently serves as General Counsel for India & South Asia at Jones Lang LaSalle(JLL), a multinational real estate services company and manages legal, compliance, and ethics verticals.
Sheel is an enterprising leader & planner with a strong track record of 21 years in streamlining legal operations, invigorating businesses, heightening productivity, and improving systems & procedures in senior-level legal assignments in contentious, transactional, and regulatory compliance domains.
Prior to joining JLL, he held positions as Director and Associate General Counsel at PwC India, where he managed legal issues for the firm across all service lines and Associate Vice President at SBI Card (then GE-SBIJV) where he had a diversified role in managing legal affairs of two distinct entities apart from being a participant in larger Generic Electric India legal leadership.

SHELLY KOHLI

Chief Legal & Compliance Officer United Breweries

Featured in the list of “100 Influential Women Driving Change in the Indian Legal Ecosystem” in 2023 by BW Legal World. Recognized in 'GC Powerlist’ 2016, 2018 and 2022 - a listing of top 100 in-house lawyers in India by Legal 500, known for their outstanding work in the country. Also featured in the “Top 100 Powerful Women in Law” in year 2017 Shelly is a corporate lawyer with over 20 years of experience, having worked both in private practice and in-house lawyer in senior management roles with large global corporations like General Electric, Unilever. She is a dual qualified lawyer enrolled to practice in India and the State of New York, USA. In her current role, she leads the legal and compliance function of United Breweries Limited and is a part of the Management Team. UBL is listed on the National Stock Exchange and Bombay Stock Exchange and is a part of Heineken Group. In this role, she is responsible for all legal and compliance matters, including corporate, litigation and intellectual property across geographies. She is a strategic legal adviser to the Board and Senior Management of the company.

SHUJATH BIN ALI

Global General Counsel & Chief Compliance Officer RE Sustainability

Shujath Bin Ali is the Global General Counsel & Chief Compliance Officer at Re Sustainability Limited. A graduate in Commerce and Law, he has done Masters in Law in Alternate Dispute Resolution & International Commercial Arbitration. A Fellow Member of the Institute of Company Secretaries of India, he has attended executive education programs on strategy, general management and leadership from Harvard University, Massachusetts, Indian School of Business, Hyderabad, and National Law School, Bengaluru. He was also a member of Toastmasters International and lead various initiatives in the development of leadership and communication skills for professionals and students. Shujath served as Senior Director-Legal, Risk Management & Company Secretary and Compliance Officer at Parexel International–India, providing strategic corporate legal advice and operational legal support for India operations. Prior to that, he was a Senior Legal Counsel & Corporate Secretary for International Paper-India.

SIDDHARTH MANCHANDA

General Counsel, Unacademy Group

Siddharth joined Unacademy Group as General Counsel in November 2021. Prior to that, he was with Indus Law, Mumbai as a Partner which he had joined in August 2020.
Siddharth started his career with Bharucha & Partners in June 2009 and was a part of the transaction advisory practice of the firm. While at the Firm, his primary fields of work included Capital Markets and Corporate Restructuring. He advised on various modes of fund raising through primary markets (including IPOs, Rights Issues, QIPs).
He focuses on corporate and business restructuring, mergers & acquisitions and equity fund raising. His experience also extends to capital markets, banking and finance. His areas of expertise include - FundRaising, M&A, Corporate Restructuring, Structured Finance and Compliance and Regulatory.

SMITHA CHANDRASHEKAR

Legal Director, HARMAN International

Smitha is the Legal Director at Harman International and has worked across various sectors including but not limited to logistics, IT, healthcare, asset finance and audio/visuals in the Asia Pacific Region. She is a trusted advisor to the top management covering a broad spectrum of legal and compliance practice - strategic advisory, Board Management, risk and compliance management, structuring and negotiating complex commercial transactions, M&A, litigation, external counsel management and talent development. Core strength/ focus in the areas of Privacy, Employment, General Corporate/ Commercial, Contract Negotiations, M&A, and Corporate Governance.

SONAL BASU

Vice President & Global Head, Legal And Compliance
Ltimindtree Limited

Sonal Basu heads Mindtree's legal, regulatory and integrity function with nearly twenty years of experience in the field of Information Technology. In her current role, she provides strategic counsel to the Board and management, across global markets and is also a champion of diversity and inclusion initiatives. Sonal regularly speaks at various reputed forums and educational institutions including IIM Bangalore and has been a faculty member for a seminar course on 'Cloud Computing' at the National Law School, Bangalore. Sonal has also co-authored a write-up on 'Bitcoins' and 'Data Science to Drive Good Governance' which were published in international journals. Sonal, an active volunteer with an NGO that emphasises the importance of children's education, holds a BLS, LLB degree from Government Law College, Mumbai and a post-graduate diploma in Intellectual Property Rights Laws from the National Law School of India University. She has a Master of Laws degree in Corporate and Commercial Law from the London School of Economics and Political Science (LSE). She has also completed her executive leadership program from Cornell University, USA

SORMISTHA GHOSH

Group General Counsel & Chief Risk Officer (Senior VP -Legal & Secretarial) Strides Pharma Science Limited

Sormistha Ghosh is Group General Counsel and Chief Risk Officer at Strides Pharma. A competent lawyer from India, she served as a consulting lawyer for almost a decade before taking up in-house roles with global MNCs. Sormistha has been associated with Strides Pharma Science Limited for over five years now.
In her current role at the group level globally, Sormistha looks after the functions of legal, secretarial, compliance and enterprise risk management. It enables her to exercise equal efforts for strategy, operations, collaboration, risk management and creating a legal centre of excellence. It brings in value to the Group operations as board member of the US entity (a material subsidiary outside India), where board members consist of independent director also. Acting as the Chief Risk Officer, Sormistha is responsible for the Risk Management Committee and the Board of Directors for reporting pro-actively all risks identified for the corporation globally.

SUCHITA SAIGAL

General Counsel, Cleantech Solar

Suchita Saigal is the General Counsel at Cleantech Solar. She joined the Company, a leading provider of renewable energy to corporations in Southeast Asia and India, in February 2021 as the Assistant General Counsel to head their India legal team. In December 2021, she was promoted to Acting General Counsel (India and SEA) and in March 2022 she was confirmed as the General Counsel (India and SEA). Suchita has 12+ years' experience in top tier law firms across jurisdictions and leading power companies. She advises on transaction structuring, acquisitions, project development, project financing, litigations and disputes, and other operational matters.
Suchita started her career as a trainee lawyer at Clifford Chance, London, and thereafter, joined its Energy and Infrastructure practice as an associate, advising on key cross-jurisdiction financings and acquisitions, including the acquisition of the biggest residential solar rooftop portfolio. Subsequently, on relocating to India, Suchita worked with the Projects practice in JSA and Trilegal. In 2016, she moved in-house to join the CLP India (now Apraava Energy) legal team. In 2019, Suchita received the CLP India Service Excellence Award.

SUDIPTA GHOSH

General Counsel, Apraava Energy

Sudipta's primary areas of practice include project financing and infrastructure projects. She is presently working with CLP India Private Limited, which is one of India's largest foreign owned power company, and is actively involved advising the Company on various legal aspects of setting up conventional and renewable projects, more specifically Wind and Solar Projects in India. In the energy sector, Sudipta's experience also includes advising, drafting and negotiating project documents, off take agreements and execution of both conventional and non-conventional power projects in India.

Sudipta has previously worked with two prestigious laws firms in India – Trilegal and Amarchand Mangaldas and has handled various domestic and international financing for infrastructure projects including the financing for Power Projects and Airports. Sudipta has varied experience and keen interest in project financing.

SURENDER SHARMA

Whole-Time Director & VP- Legal, Secretarial & Corporate Affairs, Colgate-Palmolive (India) Ltd.

Surender Sharma is Director, Legal & Company Secretary at Colgate-Palmolive (India) Limited. Being part of the Board and Leadership Team at Colgate India, he uses his more than two decades of industry experience in helping the Management to devise business strategies, risk identification & mitigation strategies and Corporate Governance.

Prior to joining Colgate, Surender had worked as an In-house Legal Counsel in Companies like Marico, Heinz India, Reckitt Benckiser, Taj Group and Maruti Suzuki. Other than India, he also handled legal issues pertaining to Bangladesh, South East Asia, Middle East & North Africa Region. He has established a reputation of solving complex business problems and introducing simplification of Legal tasks with the aid of technology. He takes keen interest in driving Ethics and Compliance Culture across the organization and developing the next line of legal talent. Under his leadership, his team has won Legal Era Awards 2020-21 for "Small Size Legal Team of the Year .

SUSHEEL JAD

Senior Vice President & General Counsel
AGP City Gas Pvt. Ltd

Susheel Jad is currently the General Counsel (India) with AG&P. He has close to three decades of experience in matters relating to Civil law, Service/employment law, Factory and Labour Law, Petroleum laws, corporate laws, Companies Law, Contract law, consumer law, property law, IPR and providing general advisory and developing long term strategy on legal cases.

He has a strong background in handling Legal Affairs, Litigation, Arbitration & Resolution of Disputes and Legal Advisory in all branches of law. He has successfully represented organisations before the Supreme Court of India, High Court of Delhi and other Courts and Tribunals on the Original as well as on Appellate side.

He carries an excellent track record of briefing Sr. Advocates such as Harish Salve, Ashok Desai, Mukul Rohatgi, Parag P Tripati, Abhishek Singhvi, Gopal Subramaniam,V.P. Singh, S. Ganesh, R.K. Anand, A.S. Chandhoik.

TEJAL PATIL

General Counsel, Wipro

Tejal Patil is an industry expert with more than 29 years of expertise in legal, compliance, risk and governance across Asia Pacific. She has given strategic and risk advice to CEOs, senior management and the Board of Directors, assisting in ever-increasing growth, keeping company's safety in mind as well. In her role as General Counsel for Wipro, Tejal heads the Legal & Compliance, Global Data Privacy and Government Affairs functions. She is also part of the Wipro Executive Council. Before joining Wipro, she was working as the Senior Legal Adviser for OYO Hotels and Homes since September 2020. Tejal joined OYO after a 19-year successful job in the global conglomerate, GE (General Electric Company) where her role was as a General Counsel of GE South Asia. Her prior experience includes Asia Pacific roles with GE's healthcare, consumer, industrial, and aviation businesses, as General Counsel based in Singapore and Tokyo.

VANDANA SETH

VP- Legal, Tata 1mg

With more than 11 years of experience, Vandana's profile is a combination of a law firm role, an in-house role and a consulting firm. A lawyer as well as a CS, Vandana is an excellent team worker who joined Themis Associates (a boutique law firm based out of Bangalore) in 2011. Her role at Themis was to lead a team for handling the pre- and post-actions related to funding transactions. Working for more than 50+ successful VC and PE transactions over a span of 3 years, in the same profile, Vandana worked on a lot of automation projects like compliance management, Term sheet automation, Nominee director training and related compliance automation and so on.

Post the role in the law firm, Vandana approached and joined Merger and Acquisition (Tax) team at Deloitte, wherein the major role she handled was end-to-end advisory and implementation of various mergers, demergers and other strategic transactions.

VANI MEHTA

General Counsel General, Electric South Asia

Vani Mehta is the General Counsel of GE for South Asia. Vani Mehta has over 18 years' experience. She brings broad experience across geographies, verticals and regulatory landscapes and is experienced in managing a diversity of risk issues across operational contexts.

In her role as the General Counsel South Asia she covers all GE businesses for leadership and strategic advice for legal function.

Vani is part of GE South Asia senior leadership team and works hand-in-hand with C-suite and executive management of all GE businesses in South Asia to identify and mitigate legal risks, drive performance, protect organizational reputation and facilitate growth. She is also the Board Member of GE India Industrial Pvt. Ltd. She is an expert in general corporate, HR, M&A, real estate and supply chain.

VIDYUT GULATI

Director Legal & General Counsel, Bharti Airtel

Vidyut Gulati joined Bharti in 2017 from Cairn where she was the General Counsel and a member of its executive committee.In terms of the legal function at the group level,she focuses her time on strategic transactions and decisions of theGroup, with a special emphasis on M&A transactions across our variousbusinesses, including in Africa. Gulati's approach to leadership withinher legal team is to be in constant proximity to business realities andrisks looking beyond the legal issues and acting as a business partnerand as a stakeholder by driving critical business decisions.

Working on some very high-stake, marque matters both on the corporateand the litigation side, have provided her with tremendous perspectiveinfluencing her manner and style of leadership. She links these factorsas being intrinsic to an in-house role. Gulati identifies that, 'the Indiantelecom sector is witnessing a phenomenal phase, where equations arebeing re-set very quickly.

VIKASH JAIN

Global General Counsel, Renew Power

A seasoned business leader, Lawyer, Executive MBA (Scholar of Excellence from ISB, India with immersions at Wharton, USA and CEIBS, China) and Company Secretary having rich and varied International experience of ~25 years in the disciplines of Corporate / Commercial laws, Compliance and Governance, Litigation and dispute resolution, Secretarial, Taxation (Direct & Indirect), Foreign Collaborations & Joint Ventures, Public Issues (both Indian and Overseas), Mergers & Acquisitions, Finance, Insurance etc.

YOGESH GUPTA

Head - Legal (Railway Business), L&T Construction

Yogesh is a legal professional with over 23 years of experience in wide spectrum of practice areas including in core infrastructure sector projects advisory, construction projects, dispute resolution, arbitration matters, civil commercial litigation, banking and finance transactions.
In the last decade, Yogesh has handled few major Infrastructure projects advising both, the government agencies as well as private developers/ contractors. He has advised clients on various stages of the project cycle starting from planning and bid stage to project financing to construction and execution phase support to the project closure.
Yogesh also handles complex disputes and arbitration arising out of the project. In his previous assignments, Yogesh has advised clients in telecom, broadcasting, banking and civil &commercial litigation matters.

YOGESH WADHWA

General Counsel, Hyundai Motor India Ltd.

With an experience of 20 years in legal profession and a mix of in-house and law firm roles, Yogesh has set up various businesses, negotiated and closed M&A transactions, worked with stakeholders all across businesses and managed complex litigations. He has also supported Government Relations and Public Policy at General Motors.
He is currently working as the General Counsel for Hyundai Motor India Limited at Gurgaon, India.
Yogesh has experience of working in India, South Asia and Middle East markets jurisdiction wit MNCs and Law Firms in Manufacturing and Oil & Gas sectors: Manufacturing (General Motors, Renault, Nissan) and Oil & Gas (Halliburton and Cairn Energy).

ZAMEER NATHANI

Group General Counsel, CarDekho

Zameer Nathani joined CarDekho in January 2023 as its Group General Counsel. Previously he has worked with organizations such as UFO Moviez, Raymond Limited, Balaji Telefilms.

He is an LLB, LLM (Civil, Corporate, Criminal, Customs,International Laws), PLD (Harvard Business School), Executive MBA(NMIMS), and has certifications in IPR, Electronic Commerce and ADRfrom WIPO, United Nations, M&A (Harvard Business School), PrivateEquity (London Business School) and US IP Laws (Stanford University).

Zameer started his practice in 2002 and was a law firm attorney forreputed corporate like Eureka Forbes, LG Electronics, TCL India, MotulOils, Ginger Hotels, Kale Consultants Software UK, Johnson & Johnson, Johnson Diversey and other multinationals from the US, UK and AsiaPacific. He joined the corporate world, becoming the Associate VicePresident of Reliance Entertainment – Digital Businesses to head thelegal affairs globally for all the digital businesses (gaming, e-commerceand OTT platform).

Legal Era in conversation with

Hari Subramaniam

The 14th President of APAA and the First Indian to hold this Position

"Keeping with other International Organisations, particularly, in the western countries, I plan to include in APAA, highly qualified and competent women attorneys in more visible and leadership roles to bring about parity with their male counterparts."

Hari Subramaniam shares his thoughts on what it takes to be an impeccable lawyer, about India being poised to take advantage of the global politico-economics situation, building a more user-friendly and innovative IP regime, bringing back into the mainstream highly technically qualified women, trends in patent litigation, advice to young aspirants on becoming successful patent professionals, and more.

A lawyer with several firsts to his credit, Hari Subramaniam is currently serving as the first-ever International President from India of Asian Patent Attorneys Association (APAA). He is the Founding & Managing Partner of Subramaniam & Associates, Attorney-at-Law, and a Registered Patent Agent.

Over his illustrious career of over four decades, Hari Subramaniam has donned many roles and made vast contributions worldwide. He was an expert witness before the Joint Parliamentary Committee for the amendment of patent laws in India; contributed to several legal, judicial and policy changes to IP regime in India, a faculty member on the Technology Information Forecasting Assessment Cell, GOI; a trainer for Judicial Officers, Parliamentarians, and Examiners; has advised the Governments of India, Mauritius, Bangladesh, China, and Nepal on IP laws; a nominee by the WIPO to conduct workshops on the PCT and is a tutor for patent specification drafting techniques; a faculty member and speaker for several seminars, conferences, and patents awareness workshops conducted by the GOI, WIPO, ABA, INTA, AIPPI and APAA, and universities globally; a member of the TIFAC team that initiated a Women's Scholarship Scheme to draw into the mainstream highly qualified women in India; and the first person to initiate black box (mail box) applications in India under the GATT/TRIPS Agreement for pharmaceutical products.

Q You have been in practice for over 42 years and have been involved in nearly 50,000 patent cases worldwide. There may not be many people with that kind of record.

I believe that I just happened to be in the right place at the right time. Add to that, some luck, some pluck, and a whole lot of hard work. In 1981, when I was recruited by Remfry & Son, as it was called then, I was probably one of a handful of Patent Lawyers possessing degrees in both science and law. Remfry & Son was the largest and the oldest IP firm in India and when they moved to New Delhi because of labour issues in Calcutta, they had less than ten experienced and qualified professionals left to handle a huge volume of pending cases. I was told by my Managing Partner that he planned to throw me into the deep sea and it was up to me to learn to swim or die. I must have learned to swim because clearly, I did not die. I had a huge volume of cases to handle on my own from day one. While it was still days of typewriters and no computers and mobile phones, I had access to an extremely well-stocked library. I read every single case published in the Report on Patent & Trademark Cases (RPC) dating back to 1842. I also had an opportunity to travel within India and overseas with the Managing Partner of the firm as well as the Head of the Patents Department several times, both of whom taught me a lot. I was fortunate to handle more patent prosecution and opposition cases in the first ten years of my professional life than an average attorney would in a lifetime, and make a reputation for myself.

Q You have near perfect record in patent cases. What do you attribute to such enormous success?

I would put it to top-class exposure and opportunities that I received in my old firm coupled, of course, with a huge amount of hard work and fire in the belly. I very seriously follow the adage that a lawyer is only as good as his or her preparation. I was a national level chess player and learnt very early in my life never to take any opponent lightly. I was also fortunate to learn from my very demanding and top-class International clients, many of whom were highly qualified IPR attorneys themselves from every part of the world.

I actually partially lost my first case in 1996 after fifteen years of practice. The city of Kobe was just recovering from a devastating earthquake and I could not get any instructions from my client Procter & Gamble situated there. I did not get a complete order in my favour although the client was very happy. The Unilever patent I opposed still survived, albeit with hugely truncated claims which was pretty good. My first real losses, three in a row, happened in 2008 and 2009 when I was representing Gilead on their HIV drugs, all of which fell victim to newly amended Section 3(d) of the Patents Act. Today, it is a crowded profession with highly qualified lawyers with tremendous exposure and resources at their disposal. Therefore, sooner or later every lawyer has to lose some cases.

Q You took over as the First-ever Indian President of the Asian Patent Attorneys Association (APAA) in November 2022. Many congratulations once again. How has the first year of this presidency panned out? Could you share your experience with us around interacting with the rich set of IP professionals pan Asia? And what are your key agenda and thoughts for the upcoming APAA General Assembly to be held in Singapore this October?

APAA is one of the most respected IP organizations with 22 member countries from Asia and observers from over 70 countries from the rest of the world. This was a tremendous success not only for me but for the entire India group as well. The victory was sweeter because I won against my closest rival, a very senior lawyer from the Philippines, by a margin of 78% votes. The previous highest margin was three votes which translated to less than 1% margin.

It has already been a very hectic first year and I expect that in the coming years, I will be stretched to the limit. Fortunately, I have several members from across South East Asia, Far East, Australia, New Zealand, and the Indian subcontinent in my team, and a highly experienced council from 22 countries. We have an exciting agenda for the coming years. Keeping with other International Organisations, particularly, in the western countries, I plan to include in APAA, highly qualified and competent women attorneys in more

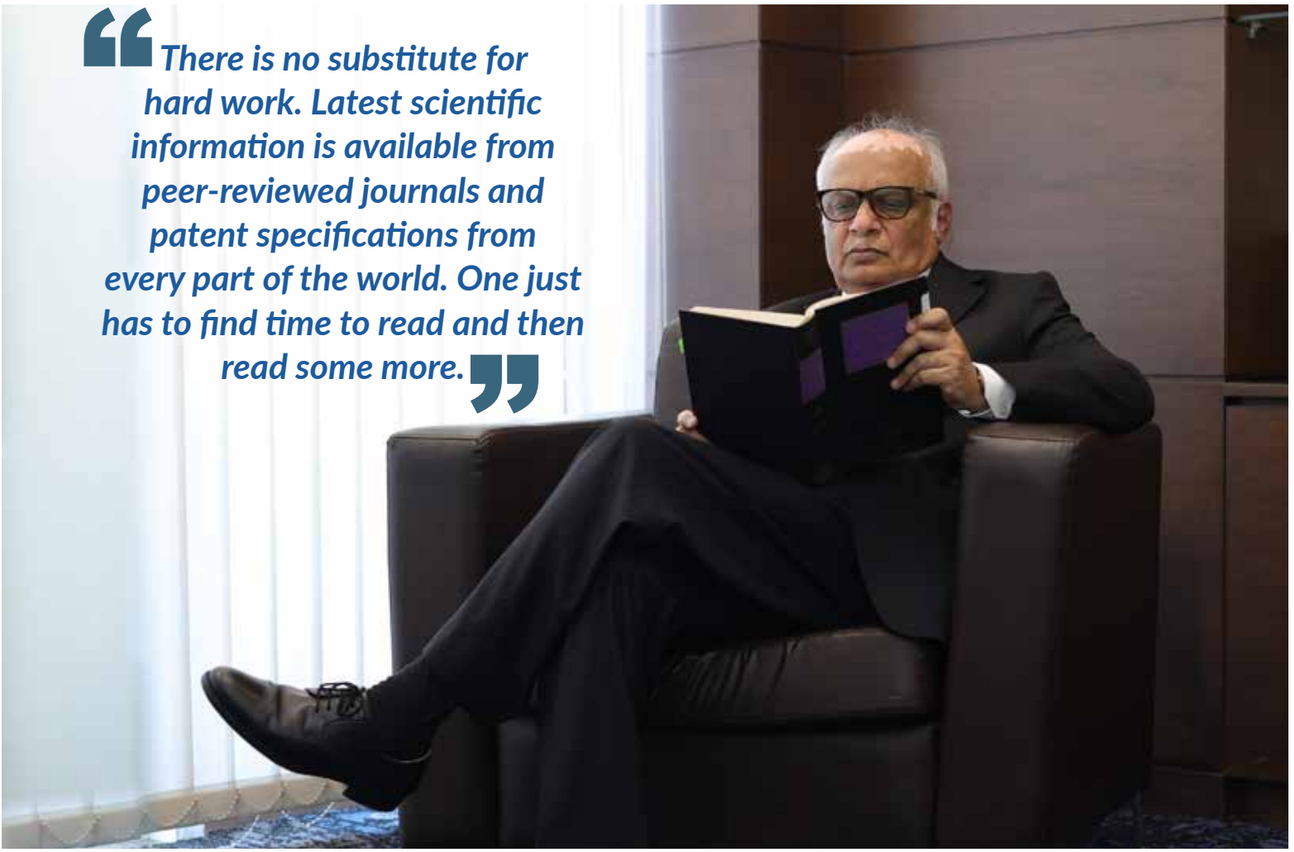
"I very seriously follow the adage that a lawyer is only as good as his preparation."

visible leadership roles to bring about parity with their male counterparts.

The Delhi High Court, which was the first to constitute an IP division in India has highly competent and visionary judges who have been extremely supportive of the cause of APAA. They have, in the past, presided over moot courts and mock trials organized by APAA. We also have several Indian IP attorneys who are ranked amongst the best in the World and I believe that it is time for India to really put itself on the world map alongside the top talent in the World. I have also planned several seminars and workshops in the neighbouring countries to strengthen IP laws within and around India and engage with the World Intellectual Property Organisation and Patent Offices and IP organizations around the world to create one of the best, if not the best, IP ecosystems in Asia and India.

Q Before this milestone, you were and continue to be the only person to have been elected to the position of President of the India chapter of APAA twice. You have also been the International Vice President of the APAA for 13 consecutive years until 2016, and the Councillor of the APAA for 25 consecutive years. Could you share a few highlights of this stellar experience and contribution, learnings, and suggestions that may benefit experienced patent lawyers today aspiring for such positions and roles in their IP careers?

My message to young attorneys is to prepare for every single case thoroughly, listen very carefully, and take down notes all the time. For me, it is a sacrilege to move around without a notepad and a pencil. It is also important to show utmost courtesy to the court and the opposing lawyers, at the same time present the client's case firmly and fearlessly. I was taught never to bluff either before the court or to the client. I also love interacting with young lawyers and show them considerable courtesy and encouragement they deserve. I will pass on the same message to the young lawyers. You make a good reputation, safeguard it all the time, work hard honestly and diligently and success and recognition will simply follow.



"There is no substitute for hard work. Latest scientific information is available from peer-reviewed journals and patent specifications from every part of the world. One just has to find time to read and then read some more."

Q In the context of today's global scene and India's growth story primed at the centre of it all, what is your take on the impact of global politico-economics on the world of IP?

IP regime can only improve and India is better poised than ever before to take advantage of its current position in the global politico-economics situation. Innovation is the key to progress. Innovation depends on market demands and market demand never ceases unless an existing product is replaced by a new product which in turn creates a new demand.

It is time that India took some valuable lessons from our neighbours China and the little dragons from Asia to ensure that the patent regime in IP is made more user-friendly and cases are fast-tracked. The Delhi High Court started its first IP division two years ago followed by Chennai but both these courts are grossly short-staffed and the judges are overworked. An IP case, particularly a patent case, takes considerably more time than most commercial disputes to resolve and it is important to have many judges in the IP courts so that each judge has more time to hear IP matters and hand down judgments quickly.

It is also important to compel Indian companies to innovate rather than copy and for that, if not entire Section 3 but at least Sections 3(d), 3(k), and 3(m) of the Patents Act, need to be done away with or at least watered down. Indian companies, particularly, pharma companies have had a field day for the last seventy years and except for a few, most of them have not even invested in R&D and still thrive on copying. Unless copying is replaced by in-house innovations and quality products, we will continue to depend for quality on imports and the "make in India" program, will remain a distant dream.

Q What is your view on Patent litigation today? Any new trends and practices that you would like to highlight in patent prosecutions and oppositions? Both for issues under the Indian Patents Act and issues under GATT/TRIPS and PCT?

Delhi is the epicentre of patent litigation in India and it gives all of us a matter of pride to see the Delhi High Court's judgements being quoted and discussed across the world. Delhi High Court was the first High Court to establish an IP division and as the only non-judicial member of the High Court's Rules Committee, I was privileged to have made some contribution to this epic and historical development. In terms of IP cases, Delhi is closely followed by Chennai, Mumbai, and Kolkata but most litigants still prefer Delhi High Court, jurisdictional issues permitting. The judges have been active, sometimes even proactive, and are fearless in writing their judgments. I will be very happy if such knowledge percolates to District Courts as well.

On the legislative side, open-ended pre-grant oppositions continue to be the bane of the innovators on the pharma side and quality patents are being delayed and often, even denied. I have used the lacunae in Section 25(1) of the Patents Act to my advantage often but hate it myself. The jurisdictions for Design cases continue to be Kolkata despite their pan-India applications. The enforcement of copyright is strong at the Courts but leaves a lot to be desired at the initial protection level. The Trade Marks Act is enforced nicely but rampant infringements and counterfeiting continue and policing in the remote parts of India remains a challenge. Infringing and counterfeit products continue to flood the market and sadly, the Indian public loves them because of their fake brand value and low cost, quality be damned. Protection of plant varieties is too difficult to prosecute and enforce. While India has always maintained that most of our IP laws are GATT/TRIPs compliant, I have my views on it and have spoken extensively on this subject in several Indian and International fora. The biggest silver lining I see is in the Delhi High Court followed by Chennai High Court whose IP Benches have been very valiantly and consistently setting the law right. Unfortunately Mumbai and Kolkata High Courts still do not have an IP Bench yet, but judgments are world-class. Once we are able to decide IP cases inside a year, we will have no reasons to complain.

Q Having been called upon several times as an expert witness before the Joint Parliamentary Committee for the amendment of patent laws in India, a faculty member on the Technology Information Forecasting Assessment Cell (TIFAC), GOI, a trainer for Judicial Officers, Parliamentarians, and Examiners, and has advised the governments of Mauritius, Bangladesh, China, and Nepal on IP laws, what are your observations on the Patent Law in force today? Areas where we are robust and even setting an example for others to follow? Areas of improvement?

I am happy that I have been instrumental in bringing about several parliamentary, judicial, and policy changes to the IP regime in India in the last four decades. Several of my suggestions have also been implemented in the patent laws of several countries including China. Mauritius has not moved much in the last twenty years even though I was the guest of the Mauritius Prime Minister more than twenty years ago and practically wrote the patent law for them.

My most important contribution to the Indian patent law was to write the first draft of the Patents Amendment Ordinance for black box filings which came into effect in the midnight of December 31, 1994, have the words "per se" inserted after "computer programme" in Section 3(k) of the Patents Act, reduce the time for obtaining a foreign filing license to three weeks from an open-ended provision and train through National and Delhi Judicial Academies, District Court judges and quasi judicial officers in IP laws and in the art of writing speaking orders.

I have, however, not yet been successful in having the provisions of pre-grant oppositions under Section 25(1) of the Patents Act and ban on incremental inventions under Section 3(d) of the Patents Act removed or at least diluted. These two provisions are probably the most widely "legally" misused provisions in the entire IP ecosystem and I have spoken extensively on them.

Q You are a regular invitee as a faculty member or speaker for several seminars, conferences, and patents awareness workshops conducted by the GOI, WIPO, ABA, INTA, AIPPI APAA, and universities globally. What is the nature of interactions at the international forum? What can our IP practitioners and aspirants imbibe for international benchmarking?

I have lectured in over 250 Indian seminars and 120 International fora. Until about fifteen years ago, there were just a handful of us from India who were seen and heard, both in India and overseas. Now the Indian contingent in every international seminar and conference is the largest. There are many of us, who not only act as ambassadors of the country but also bring in a huge wealth of information and knowledge from overseas. Gone are the days when the Indian courts used to rely only upon U.K. judgements and precedents. Even, many of the Indian judges preside over, participate in, and attend such seminars and meetings. Now they consider, often rely upon, and apply judicial precedents not only from the U.K. and U.S.A. but Europe, Japan, Korea, Australia, and several other countries.

The International seminars are a powerhouse of knowledge and information and I would advise young Indian lawyers to not just use such fora for networking but also attend educational workshops, which I often did and still do.

Q You were a part of the TIFAC team that initiated a Women's Scholarship Scheme to draw into the mainstream the huge scientific pool of talent existing in the form of highly qualified but not employed women in India. And the result was that you, along with many other eminent lawyers, trained such women in intellectual property laws, thereby adding 2000 patent attorneys. What was the experience like? Distinct thoughts and observations on this contribution to the profession?

Again, I believe that I was at the right place at the right time. In April 1998, I had just moved away from Remfry & Son (which had by then been renamed Remfry & Sagar) and had founded my firm. I had seventeen years of experience behind me then and a lot of time on my hands. I was, therefore, commissioned by the Government of India to bring back into the mainstream highly technically qualified women who had either refrained from working or stopped working in the industry or legal profession for various reasons. I was one of the few senior lawyers tasked with interviewing, selecting, and recruiting

such qualified women and training them in our own law firms at the government's expense for two years. This was perhaps the most satisfying achievement of my entire profession. Thanks to this initiative funded by the government, we have been able to add over three thousand highly qualified women attorneys to the profession, and several of them, with more than 18 years' experience, are partners in my firm.

I also taught a year long weekend course in Mumbai for several years for aspiring IP professionals in the Academy of Intellectual Property Law Studies and the Institute of Intellectual Property studies. Sadly, Ms. Margi Patel, a brilliant and very young visionary, and a dynamic founder of these Academies and courses, is no more. I am proud to say that almost every IP head in every Indian company and senior patent attorneys in several law firms in India, including partners, are Margi's and my students. 90% of products of such initiatives are working with law firms and industry in very senior capacities.

Q You were the first person to initiate black box (mailbox) applications in India under the GATT/TRIPS Agreement for pharmaceutical products, and your applications were the basis for the Patent Office to formulate rules and policies for filing, receiving, and examination of mailbox applications. How did you innovate and accomplish this milestone in the practice of patent law? What was the journey and your approach that led you to that point of innovation?

In my former firm, within ten years, I was prosecuting the largest number of patent matters in the country, and apart from clients in other areas, I was also representing every single pharma giant from across the globe. I was also acting as the IP spearhead of the Confederation of Indian Industries (CII), which I continued to do until about 2005. I was, therefore, the obvious choice to advise the Ministries of Science and Technology, Commerce and Industry, and Law and Justice to bring about major changes in our law to comply with International obligations under GATT as it was then, without losing sight of the country's own socio-economic situation. We had a moratorium of 10 years to become GATT/TRIPS compliant and we had to make full use of that. I was interacting

with these three ministries and the Indian Patent Office on issues with respect to GATTS/TRIPS, the Patent Cooperation Treaty, and the Paris Convention on intellectual property. This enabled me to assist in formulating the first draft of Patent Amendment Ordinance, which was based on Articles 78 and 79 of the GATTS/TRIPS agreement, which came into force on January 1, 1995, to comply with the country's International obligations. I was also the first person to enforce exclusive marketing rights protection using the pipeline protection granted under WTO, pending product patent regime, and successful in obtaining injunctions against infringers of UPL's Carbendazim and Mancozib agrochemical formulation in seven jurisdictions in India.

The next ten years up to 2005, brought about several changes to our IP laws to make our own laws TRIPS compliance and I was involved in many of them at the policy, judiciary, and parliamentary levels as an advisor and a lawyer. It was not easy. Every newspaper heading was screaming with "Anti-IP regime" headlines. I was again part of the team commissioned by TIFAC, an arm of the Department of Science & Technology, to educate and sensitise the public, the industry, and the universities, from the grassroots to the highest level possible on the benefits of product patent regime in particular and IPR laws in general. I was part of hundreds of seminars and teaching programs across the country in this initiative. I helped some leading Indian companies set up their R&D facilities. It would not have been possible without the Government of India's vision, participation, and finance.

Q Being on the teaching faculty of several legal and technical institutes in Delhi, Mumbai, Bangalore, and Hyderabad, are there observations you would like to share on the nature and personality, expectations, and visions, of the law students today? What can they do differently to bring out their best versions when they join the profession? And what can the lawyer fraternity and India Inc. do differently to empower them?

The students now are very different and more motivated than when I started my practice. Most law schools offer excellent curricula (some of which have been designed by me), faculty, resources, and opportunities. They are also equipped to bring in faculty from across the world. Therefore, I not only enjoy teaching but also return highly enriched both by the students and other faculty members. More and more young students are deciding, even at school and college levels, to pursue a career in IP law. Amazing opportunities are awaiting them both in law firms and industry and they are aware of that.

IP profession is like commando training – several aspiring candidates fall by the wayside too often and too quickly. I would advise the young aspirants that it is very important to develop staying power and use the opportunity to learn from the judges, IP Officers, senior lawyers, and their peers. IP is certainly not for people who expect too much too quickly. Most IP cases are difficult and involve very huge stakes and highly complicated science. The potential clients are mostly huge multinationals and institutions from across the world manned by experts. Stress levels can be very high. IP profession is neither for fly-by-night operators nor for the faint-hearted. But for those, who are willing to stay and learn, there is an abundance of opportunities.

Q Your fields of specialization include physics, chemistry, biochemistry, pharmaceuticals, biotechnology, mechanical, electrical, and electronics, trademark prosecution, opposition, and litigation. That is quite an impressive fleet! How do you make the time and energy to do it all? Tips for fellow professionals at different stages of their IP careers?

In my formative years, I was fortunate to receive excellent exposure and training with some of the best professionals from every part of the world. Throughout my career, I have not only interacted with some of the best scientists including Nobel laureates but also some of the best IP lawyers from over 100 countries. Electronic resources were not available back then and therefore, every available resource like libraries including Bar Council Libraries, judgments, text books and journals had to be accessed physically. It meant spending a lot of personal time and money. The basic formula has not changed, only better tools are available now. Latest scientific information is available from peer-reviewed journals and patent specifications from every part of the world. One just has to invest some money, find time to read and then read some more. There is no substitute for hard work.

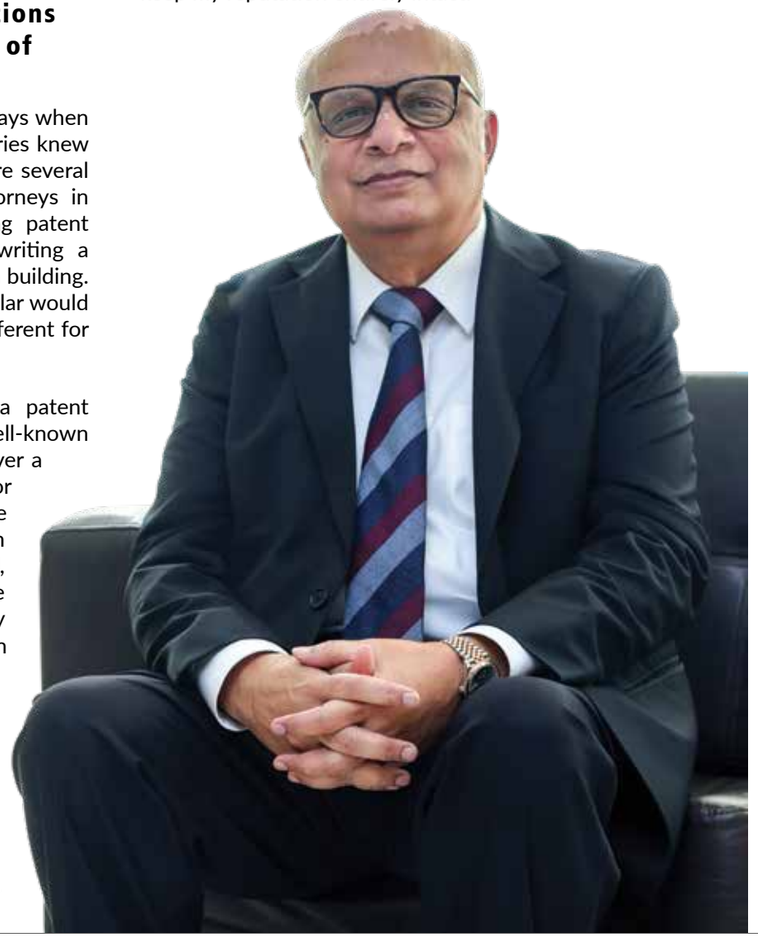
Q You have been nominated by the World Intellectual Property Organisation (WIPO) to conduct workshops on the Patent Co-operation Treaty (PCT) and as a tutor for patent specification drafting techniques. Could you share your experience on this side of IP practice? What do you tell young lawyers aspiring to become successful patent agents? What skills are required to be adept at drafting and prosecuting patent applications in countries and different areas of technology?

That was some time ago. Those were the days when no one in India or most of the Asian countries knew how to write patent documents. There were several new members to PCT and very few attorneys in these countries had experience in writing patent specifications. I would always compare writing a patent specification with burglar-proofing a building. If any entry point is left unsecured, the burglar would find his way into the building. This is no different for an infringer.

I would also insist that the writer of a patent document must use well-accepted and well-known scientific terms wherever possible. Whenever a new terminology is employed, the inventor must be his own lexigrapher and the patent professional must ensure that each expression is well defined and described, prior art well explained and the difference of the invention from the prior art properly brought out. Every claim and description must be drafted with enforcement in mind. One should develop the ability to anticipate the questions a judge is likely to ask, and the opposite counsel is likely to raise. If IP rights are not properly protected, there will always be a scope for a third party to copy the rights and yet not "infringe". Therefore, after each exercise by one set of students to write patent specifications, I would ask another set of students to find ways of copying the invention without legally infringing. If any student was able to achieve it, it would mean that the patent specification was not properly drafted and IP rights were not secure enough.

Q You have already been in practice for 42 years and have won the highest affiliates and awards both domestic and international. What are your plans?

After being in the arena for so many years, awards no longer matter. I follow my own adage that a lawyer never retires, only drops dead. I assume that I shall continue in the profession as long as I can stand, read, write and speak and die with my boots on, striving to keep my reputation entirely intact.



DIGITAL PERSONAL DATA PROTECTION ACT, 2023

IDENTIFYING THE DATA FIDUCIARY

Identifying entities involved and determining their role as data fiduciary or processor is important because to the customer (data principal) the e-commerce platform or retail brand/store would naturally appear to be the data fiduciary, being the single point where the transaction is concluded.

With the Digital Personal Data Protection Act, 2023 ("Act")in place, a key aspect of understanding compliance is identifying the role of each person in a transaction. For an over-the-counter transaction involving cash, this may be simple enough but is more challenging when there are multiple entities involved.

E-commerce and retail are apt examples - identifying entities involved and determining their role as data fiduciary or processor is important because to the customer (data principal) the e-commerce platform or retail brand/store would naturally appear to be the data fiduciary, being the single point where the transaction is concluded. Therefore, it is useful for the merchant as purported data fiduciary to accurately identify all data fiduciaries in a transaction and notify the customer appropriately.

An e-commerce transaction typically involves the platform, seller, payment participants and fulfilment participants.

Platform: In a marketplace platform where multiple sellers register and sell products, the platform will be a data fiduciary in respect of the customer using the platform, having collected personal details of the customers. It is also uniquely able to track consumer behavior and serve tailored product offerings and suggestions.

Seller: The third-party seller registered on the platform will also be a data fiduciary depending on the extent of control the platform exerts. For orders fulfilled by the seller, it is in the position to be a data fiduciary along with the platform, with access to customer contact and order details. Some sellers, depending on their size and range of product offerings, will also be able to track consumer behavior in relation to their own offerings.

However, the platform may seek to restrict the amount of data available to a seller and place contractual restrictions on the seller's use of data. For instance, on the website of a prominent marketplace platform,

ABHISHEK MITRA
Counsel

DSK Legal
True Value, True Values

controller[1]-processor or controller-controller terms were not available under the seller registration portal, with protection of customer information and data usage restrictions being covered under a brief confidentiality clause. The lack of documentation and ambiguity could be deliberate: avoid expressly designating the seller as a data fiduciary/ controller so that the platform maintains a semblance of control over processing purpose; also, expressly designating the seller a processor would make the platform liable for the seller's processing activity without retaining real control over the same.

Payment participants

Payment participants may appear to be processors, being principally an enabler of a transaction between a merchant and a customer. This may not be the case. In a credit card transaction, there are 6 or more participants – cardholder, merchant, payment processor (including provider of the PoS/card swipe machine and payment gateway), card network (Visa, MasterCard, RuPay, etc), the card issuer and the merchant acquirer.

The extent to which some of these entities process personal data in the role of a data fiduciary is difficult to determine with certainty without visibility of the contracts among these participants. Each party is in the position to be a data fiduciary as well as a processor, depending on its role (some roles are subject to distinct licenses or approvals from RBI), but would likely fall within the category of joint data fiduciaries (joint controllers) as each entity determines purpose of processing of collected personal data.

The card issuer (bank) acts basis a contract with the individual, therefore, is in the position to act as a data fiduciary vis-à-vis the individual. The card network may also process personal data, being involved in the transaction. For instance, the website of a card network, in categories of personal data it may collect, stated: "Information about your transactions, including the date, time, location and amount of the transaction and information about the merchant. This may also include item-level data in some instances, and billing and shipping information."

The PoS provider also appears to process data as a data fiduciary at present. The website of a PoS provider stated: "When you use our PoS to make, accept, request, or record payments, we receive information about when and where the transactions occur, the names of the transacting parties, a description of the transactions, the payment or transfer amounts, billing and shipping information, and the devices and payment methods used to complete the transactions".

These entities participating in the payment process operate largely based on standard form contracts with merchants and customers having limited or no ability to negotiate the terms, making it more relevant for the merchants to be aware of their status as data fiduciary or processor.

Fulfilment

Fulfilment vendors such as couriers, transporters and warehouse providers will fall within the realm of processors, i.e., one who carries out any processing activity on behalf of the fiduciary, and as per the instructions of and based on a contract with the data fiduciary. Their role is entirely subject to terms with the merchant or platform.

[1] The term 'controller' is used in place of 'data fiduciary' internationally.

> *"Being principally liable under the Act for processing activity, each participant in a transaction must identify its own role and that of others involved as a 'data fiduciary' or 'processor' and ensure adequacy of contracts with participants identifiable as data processors.*

Following the money

In a situation where clear determination of a participant's relationship with other entities in the transaction becomes challenging to determine, a key approach could be to decipher the flow of money in the transaction. This does not have to be directly between the merchant/ platform and the customer alone, but also the revenue source of each participant in the transaction. For instance, while the card issuer earns from the customer, the merchant acquirer deducts a fee from the amounts paid to the merchant, and both receive personal and transaction information of the customer.

What the data fiduciary must do

Being principally liable under the Act for processing activity, each participant in a transaction must identify its own role and that of others involved as a 'data fiduciary' or 'processor' and ensure adequacy of contracts with participants identifiable as data processors.

For the platform (or merchant in case of retail), it is important to accurately identify and inform customers of the existence of other data fiduciaries to mitigate its own risk.

Depending on what rules are notified by the government vis-à-vis notice requirements, this could become cumbersome, and this is where participants will feel the absence of 'performance of a contract' as a ground for processing. The European General Data Protection Regulation provides this as a key ground for processing where consent of the data principal is not necessary. The Act leaves this out, making consent the only available ground. The absence of this enablement will be more relevant to participants currently determining purpose of processing but who have no direct nexus with the data principal. These entities may see their sources of customer behavioral information drying up, or coming with significant restrictions from participants who are clearly data fiduciaries.

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Snapshot of Changes Proposed to Indian Penal Code, 1860 by Bharatiya Nyaya Sanhita Bill, 2023

The upcoming Bharatiya Nyaya Sanhita Bill represents a modernized approach to criminal legislation, catering to emerging forms of crimes and ensuring a more comprehensive legal framework to combat organized crimes and related activities.

The Government of India has recently introduced three bills in the Lok Sabha to replace laws which form the backbone of criminal jurisprudence in India viz., Indian Penal Code,1860, Indian Evidence Act 1872, and Criminal Procedure Code1973 with "Bharatiya Nyaya Sanhita Bill, 2023 (BNS)", "Bharatiya Sakshya Bill, 2023 (BS)", and "Bharatiya Nagarik Suraksha Sanhita Bill, 2023 (BNSS)" respectively.

We understand the object behind replacing aged criminal laws including Indian Evidence Act is to:

(i) Strengthen law and order;

(ii) Simplifying legal procedure so that ease of living is ensured to the common man;

(iii) Address the technological advancement undergone in the country during the last few decades besides achieving transformation in the criminal justice system and ensure delivery of justice within a maximum of three years.

About Bharatiya Nyaya Sanhita Bill, 2023 (BNS):

BNS Bill aims to replace the Indian Penal Code, 1860 proposing total of 356 provisions, replacing certain provisions and has given precedence to offences against women and children, murder, offences against State. For the first time, the offences of terrorist activities and organized crime have been added in the bill. BNS has proposed to delete certain provisions of Indian Penal Code, 1860.

Indian Penal Code, 1860	Bharatiya Nyaya Sanhita Bill, 2023
Sections-511	Clauses-356
Chapters-23	Chapters-29

Here are some of the major changes, the BNS Bill proposes:

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Newly added provisions:

(i) Abetment outside India for offence in India (Clause 48): BNS provides for punishing a person who abets beyond India for the commission of offence in India which would constitute an offence if committed in India. Proposes 7 years punishment.

(ii) Sexual intercourse by deceitful means of false promise to marry, etc. (Clause 69): BNS provides for punishing a person who by deceitful means or making by promise to marry to a woman without any intention of fulfilling the same, and has sexual intercourse with her, such sexual intercourse not amounting to the offence of rape-Proposes ten years punishment.

(iii) Gang rape (Clause 70 (2): BNS inserted a proviso wherein a woman under eighteen years of age is raped by one or more persons constituting a group or acting in furtherance of a common intention, each of those persons shall be deemed to have committed the offence of rape and shall be punished. Proposes punishment of imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and with fine, or with death.

(iv) Hiring, employing or engaging a child to commit an offence (Clause 93): BNS provides for punishing a person who hires, employs or engages any person below the age of eighteen years to commit an offence. Proposes punishment of either description or fine provided for that offence as if the offence has been committed by such person himself.

(v) Mob Lynching (Clause 101(2): BNS Bill has incorporated a specific provision for mob lynching and stipulated punishment. When a group of five or more persons acting in concert commits murder on the ground of race, caste or community, sex, place of birth, language, personal belief or any other ground each member of such group shall be punished with death or with imprisonment for life or imprisonment for a term which shall not be less than seven years, and shall also be liable to fine.

(vi) Causing Death by Negligence (Clause 104): BNS provides for punishing a person who causes death of any person by doing any rash or negligent act not amounting to culpable homicide and escapes from the scene of incident or fails to report the incident to a Police officer or Magistrate soon after the incident. Proposes punishment of either description of a term which may extend to ten years, and shall also be liable to fine.

(vii) Organized Crime (Clause 109): BNS provides a comprehensive definition for Organized Crime to mean kidnapping, robbery, vehicle theft, extortion, land grabbing, contract killing, economic offences, cybercrimes, trafficking, drugs when committed by a group of individuals, whether as members of a crime syndicate or for such a syndicate. Proposes punishment of death, life, minimum three years and fine depending on commission of offence.

> *"The process of amending and replacing the IPC requires thoughtful consideration, undertaken with care and should be aimed towards balancing the need for change with the preservation of fundamental rights and legal principles.*

(viii) Petty organized crime or organized in general (Clause 110 (i) and (ii)): BNS provides for punishing a person who causes general feelings of insecurity among citizens relating to theft of vehicle or theft from vehicle, domestic and business theft, trick theft, cargo crime, theft (attempt to theft, theft of personal property), organised pick pocketing, snatching, theft through shoplifting or card skimming and Automated Teller Machine thefts or procuring money in unlawful manner in public transport system or illegal selling of tickets and selling of public examination question papers and such other common forms of organised crime committed by organised criminal groups or gangs. Proposes punishment of imprisonment for a term which shall not be less than one year but which may extend to seven years, and shall also be liable to fine.

(ix) Offence of terrorist act (Clause 111): BNS has listed the act of terrorism as a separate offence. Terrorist acts have been defined as acts such as using bombs, dynamite or other explosive substance to cause damage or loss due to damage or destruction of property or to cause extensive interference with, damage or destruction to critical infrastructure, etc., with the intention to threaten the unity, integrity and security of India, to intimidate the general public or a segment thereof, or to disturb public order and which could attract a minimum imprisonment of five years, life imprisonment and even death in some cases besides fine. Proposes punishment of three years to life depending on commission of offence.

(x) Grievous hurt causing permanent disability or persistent vegetative state(Clause 115 (3)): BNS incorporated new provision stating that a person who commits an offence in the course of such commission causes any hurt to a person which causes that person to be in permanent disability or in persistent vegetative state. Proposes punishment of a term which shall not be less than ten years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life.

(xi) Hurt caused by mob (Clause 115 (4): BNS punishes a person who causes grievous hurt of a person by a group of five or more persons on the ground of his, race, caste, sex, place of birth, language, personal belief or any other ground. Proposes punishment of either description for a term which may extend to seven years, and shall also be liable to fine.

(xii) Acts endangering sovereignty unity and integrity of India (Clause 150): BNS has incorporated a specific provision for acts endangering sovereignty unity and integrity of India. Whoever, purposely or knowingly, by words, either spoken or written, or by signs, or by visible representation, or by electronic communication or by use of financial mean, or otherwise, excites or attempts to excite, secession or armed rebellion or subversive activities, or encourages feelings of separatist activities or endangers sovereignty or unity and integrity of India; or indulges in or commits any such act. Recently, Hon'ble Supreme Court of India has also relooked the provisions of Sedition under Indian Penal Code, 1860. Proposes punishment of imprisonment for life or with imprisonment which may extend to seven years, and shall also be liable to fine.

(xiii) Attempt to commit suicide to compel or restraint exercise of lawful power (Clause 224): BNS provides for punishing a person who attempts to commit suicide with the intent to compel or restrain any public servant from discharging his official duty. Proposes punishment of simple imprisonment for a term which may extend to one year or with fine or with both or with community service.

(xiv) Snatching (Clause 302(i)): BNS proposes that theft is "snatching" if, in order to commit theft, the offender suddenly or quickly or forcibly seizes or secures or grabs or takes away from any person or from his possession any moveable property. Proposes punishment of either description for a term which may extend to three years, and shall also be liable to fine.

(xv) Inclusion of Community Service under the Punishment: BNS calls for community service for the first time as a punishment for petty offences, where the punishment is given for offences like public servant unlawfully engaging in trade, attempt to commit suicide to compel or restraint exercise of lawful power, petty theft, misconduct in public by a drunken person and defamation.

(xvi) Enhancement of fines, imprisonment and community service: The BNS also proposes to increase in the punishment, fines as well as community services for various offences such as causing death by negligence, buying child for prostitution, rioting with deadly weapons, defamation, breach of contract to attend on and supply wants of helpless person, misconduct in public by a drunken person, criminal trespass, cheating by personation, etc.

(xvii) 'Transgender' has been defined in accordance with the Transgender Persons(Protection of Rights) Act, 2019 under clause 2(9) of the proposed Sanhita

(xviii) Certain offences deleted: The BNS proposes to delete certain offences such as (i) Sedition (Section 124A I.P.C.),(ii) Weights and measures(Sections 264 to 267 of I.P.C.), (iii) Attempt to commit suicide (Section 309 I.P.C.), (iv) Thug and punishment for thug (Sections 310 and 311 I.P.C.),(v) Gangrape of woman under the age of 16 and 12 years, respectively (Sections 376DA, 376DB I.P.C.), (vi) Sexual intercourse against the order of nature (Section 377 I.P.C.),(vii) Lurking house trespass at night (Section 444 I.P.C.),(viii) House breaking at night (Section 446 I.P.C.) and (viii) Adultery (Section 497 I.P.C).

The upcoming BNS represents a modernized approach to criminal legislation, catering to emerging forms of crime and ensuring a more comprehensive legal framework to combat organized crime and related activities. The Bill has been referred to the Parliamentary Standing Committee on Home Affairs and the Committee has three months' time to carry out consultations and submit its report. The Committee has provided its report on 06.11.2023 and suggested certain recommendations which are outlined in brief hereunder:

a) **Offences removed by the BNS:** The BNS removes offences related to adultery and same-sex sexual activities (Section 377 of the IPC). The Committee noted that in 2018, the Supreme Court struck down the section on adultery in the IPC. The Committee felt that institution of marriage is considered sacred in Indian Society and there is a need to safeguard its sanctity. It recommended insertion of Section 377 in the proposed law.

b) **Mental illness:** Under the IPC, any act performed by a person of unsound mind cannot constitute an offence. The BNS retained this provision but replaces the term 'unsound mind' with 'mental illness'. The Committee recommended revisiting to the term 'unsound mind' instead of 'mental illness'.

c) **Organised crime:** The BNS defines organised crime as a continuing unlawful activity carried out by three or more people acting alone or jointly as members of a crime syndicate or on its behalf. Attempting or committing organised crime will be punishable by death or life imprisonment and a fine of at least Rs 10 lakh, if it causes the death of any person. The Committee viewed that there was no distinction between committing an offence and attempting to commit it and recommended separating the two for clarity. It also proposed replacing 'group of three or more persons' with 'two or more persons' to widen its scope.The Committee advised redrafting the provision.

d) **Petty organised crime:** The BNS defines and penalises petty organised crime. These include: (i) forms of theft such as vehicle theft and pickpocketing, (ii) illegal selling of tickets, and (iii) any other form of organised crimes committed by a gang. These crimes cause general feelings of insecurity amongst citizens. Experts informed the Committee that the term 'general feelings of insecurity' is vague. The Committee advised redrafting the provision.

e) **Terrorism:** The BNS adds terrorism as an offence and defines it as an act that includes threatening the Unity, Integrity, and Security of the Country or intimidating the public. The Committee suggested defining 'intimidation' to resolve the ambiguities in categorizing an act as a terrorist act.It also suggested that the expression 'foreign country' should be replaced with 'anywhere outside India' to widen the scope of clause to cover all offenders located outside India.

f) **Community service:** BNS introduces community service as a form of punishment. The Committee recommended defining the term suitably along with the nature of Community Service. It also proposed that a provision may also be made with regard to making a person responsible to supervise the punishment given in the form of community service.

g) **Causing death by negligence:** Anyone who causes death by negligence and fails to report the incident may face imprisonment up to 10 years and a fine. The Committee noted that this may violate the fundamental right against self-incrimination. If the provision is to be retained, it recommended limiting it to only motor-vehicle accidents.

h) **Murder by a group:** BNS adds a separate penatly for murder committed by five or more persons on certain grounds. The same is punishable with at least seven (7) years imprisonment to life imprisonment, or death. The Committee recommended deleting the imprisonment of seven (7) years after consulting the Attorney General and Solicitor General of India.

We are of the view that Government would take into consideration the recommendations suggested by Parliamentary Committee and make the proposed law relevant to the contemporary situation and provide speedy justice to common man.

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Achieving Liftoff

A Perspective on the Growth of the Indian Space Industry

The liberalisation in the investment thresholds and the PPP projects undertaken with ISRO have resulted in a steady rise of private sector participation, which in turn has benefitted conglomerates looking to invest, as well as given much needed ground level expertise to the various SMEs operating in the industry.

India's contribution to the global space economy is predicted to be boosted by more than 10% by the year 2030, from a current global contribution of merely 2 – 3%, and has the potential to develop into a USD 40-100 Billion space industry by 2040. As reported by Invest India, India has launched 381 foreign satellites for 34 countries, on a commercial basis, between 1999 and 2022 with a cumulative revenue of USD 279 Million for the Indian Space Research Organisation (**ISRO**).

Currently, there are more than 400 firms, conglomerates and Small-Medium Enterprises (**SMEs**) alike, already contributing towards the growth of India's space sector under the leadership of ISRO. In a year that has already seen the prodigious feats accomplished by the Chandrayaan-3 mission, the Indian space industry is set to be further augmented by the USD 125 Billion budget earmarked by the Indian government for the Department of Space (**DOS**) in the Union Budget for FY 2023-24.

Analysing FDI in the Space Sector

Until May 2015, Foreign Direct Investment (**FDI**) in establishment and operation of satellites was permitted up to 74% under the government route. Subsequently, the Government of India vide press note 12 dated 14 November 2015, which was retrospectively effective from 12 May 2015, amended the consolidated FDI policy to permit foreign investment in establishment and operation of satellites up to 100% under the government route, subject to the sectoral guidelines issued by the DOS/ ISRO. The status quo has been maintained ever since and even in 2023, the FDI Policy remains unchanged vis-à-vis FDI in the Indian space sector.

Recently, ISRO has started adopting Public Private Partnership (**PPP**) policies to encourage companies to take up more production activities rather than being part/ component manufacturers. The liberalisation

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in the investment thresholds and the PPP projects undertaken with ISRO have resulted in a steady rise of private sector participation, which in turn has benefitted conglomerates looking to invest, as well as given much needed ground level expertise to the various SMEs operating in the industry.

In a 2022 report, EY had predicted that the manufacturing sector within the Indian space economy would emerge as the second most rapidly expanding segment by 2025 on account of the increasing involvement of private entities in the space industry. The Indian space technology sector had received USD 28 Million in investments in the year 2020 which has risen exponentially to USD 112 Million in 2022. In the first half of 2023, startups operating in the space industry had already received USD 62 Million in funding, as reported by research firm Tracxn.

In recent years, there has been a steady and significant growth in the number of start-ups in the space sector, with private investments also rising by nearly 300%, as evidenced by (i) the USD 36 Million investment by Google in Bengaluru based start-up Pixxel, (ii) a substantial funding of USD 51 Million secured by Skyroot Aerospace, a manufacturer of launch vehicles, with Singapore's GIC taking the lead in the funding round, (iii) the partnership between Bharti Global, an Indian telecommunications conglomerate, and One Web, a UK-based satellite communications company, to invest in and launch a global satellite internet constellation, which aims to provide internet access to remote and underserved regions around the world, and (iv) a fund raise of USD 20 Million by space-tech startup Agnikul, incubated at IIT Madras, from a venture capital firm and an existing investor, Rocketship.

Government Initiatives – staying ahead of the curve

India's space sector is in the midst of evolving norms and regulations targeted at boosting the space economy in the country. The government has been actively taking initiatives to enable the commercialisation of the space sector in the country and induce private investments in the domain, with the aim of increasing the country's share in the global space market.

Earlier this year, ISRO released the Indian Space Policy 2023 (**Space Policy**), which encompasses various reforms announced by the government for facilitating a level-playing field by aiding participation of non-governmental entities in the industry. With the vision to enable, encourage and develop a flourishing commercial presence in space, the Space Policy seems to finally embrace the vital role played by the private sector in the overall value chain of India's space economy.

In a significant departure from the erstwhile policy, which focused on ISRO's role as the sole agency for space activities in the country, the Space Policy elucidates the roles played by the DOS, ISRO, the Indian National Space Promotion and Authorisation Centre (**IN-SPACe**) set up in 2020, and the New Space India Limited (**NSIL**, the commercial arm of ISRO). According to the Space Policy, ISRO's focus will now shift towards cutting-edge R&D and long-term projects such as the Chandrayaan and Gaganyaan missions, whereas NSIL will now become

> *"The government has been actively taking initiatives to enable the commercialisation of the space sector in the country and induce private investments in the domain, with the aim of increasing the country's share in the global space market.*

the interface for interacting with the industry, undertaking commercial negotiations and providing hand-holding support to ensure smooth and efficient transfer of technologies.

The DOS shall be at the helm of ensuring implementation of the Space Policy, with it also being responsible for interpreting and clarifying any ambiguities and ensuring continuous earth observation capability and data for national requirements. Additionally, IN-SPACe will be the autonomous government organisation acting as the single-window agency for authorising space activities, along with overseeing and guiding such activities in the Indian space industry.

Furthermore, the recently released Draft National Deep Tech Startup Policy 2023 (**NDTSP**), which has a significant focus on promoting deep tech startups in the space sector, further encourages private participation in end-to-end space activities. In essence, the NDTSP recognizes the potential of advanced technologies in transforming the space sector and aims to create a conducive ecosystem for such innovations to thrive.

Conclusion

The regulatory clarity vis-à-vis the roles and responsibilities of the various departments/ agencies, coupled with the flexibility provided by a case-to-case basis evaluation of proposed space activities by IN-SPACe, provides much needed encouragement to private players seeking avenues of contributing to the growth of the Indian space economy. With continuous regulatory headway and the spotlight shining brightly on the Indian space industry on account of the indubitable success of Chandrayaan-3, India is fast emerging as the favoured destination for foreign investments in the space industry.

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From Emissions to Exports: Indian Perspective on EU's Carbon Border Adjustment Mechanism

The EU ETS system aims to reduce carbon emissions by promoting the adoption of effective technologies and mechanisms for manufacturing goods or attaching costs to carbon emissions through emissions allowances.

The European Union (EU) has responded to climate change and carbon emissions by introducing the EU Emissions Trading System (EU ETS). The EU ETS is based on a 'cap and trade' system as per which a limit or a cap is set on the overall carbon emissions of operators engaged in specific sectors, and such a limit is further cut down to lower the carbon emissions. The operators must purchase or receive emissions allowances to emit carbons within the permissible limit/ overall cap. The emissions allowances are tradable and can be sold to other operators if the operators possessing them can reduce their carbon emissions. The EU ETS system aims to reduce carbon emissions by promoting the adoption of effective technologies and mechanisms for manufacturing goods or attaching costs to carbon emissions through emissions allowances.

Implementing the EU ETS system can drive entities covered under the said system out of the EU to manufacture carbon-intensive products in non-EU countries. It may result in the EU receiving carbon-intensive products imported from non-EU countries, thus resulting in "carbon leakage". Carbon leakage refers to a situation where manufacturers of carbon-intensive products move from a jurisdiction with stringent restrictions on emissions to a jurisdiction with less strict regulations. Consequently, a carbon-intensive product, which may not be subject to restrictions similar to the EU

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ETS in non-EU jurisdictions, may replace products locally manufactured in the EU.

To deal with the situation of carbon leakage, the EU has developed the Carbon Border Adjustment Mechanism (CBAM). As part of this mechanism, importers of goods to the EU will be required to declare embedded carbon emissions concerning the production of the imported goods. Corresponding to such emissions, the said importers will be required to surrender CBAM certificates to which a price based on the average auction price of EU ETS allowances will be attached. Further, the price payable on carbon emissions will be subject to a deduction of any price already paid on such emissions in the country of production. In the first phase of the CBAM, sectors such as cement, iron and steel, aluminium, fertilisers, electricity and hydrogen are covered.

The CBAM has come into effect in its transitional phase from October 1, 2023. In the transitional phase, the importers are required to report the embedded carbon emissions from products imported into the EU during their manufacturing process in the country of export. This reporting requirement will be quarterly; the concerned importers must submit their first report by January 31, 2024. The permanent system will be applicable from January 1, 2026, after which the concerned importers must submit CBAM certificates corresponding to the carbon emissions.

Impact on India

The reports suggest that India's exports to the EU, especially in base metals such as steel, aluminium and iron, will be affected. India is one of the biggest exporters of iron, steel and aluminium to the EU. In 2022, India exported iron, steel and aluminium products of value USD 8.2 billion (i.e., 27% of India's total export of the said base metals) to the EU.[1]

As per a recent report, implementing the CBAM may reduce the profits of India's steel exporters to the EU by USD 60-165/MT from 2026 to 2034. As a result, 15-40% of India's yearly steel exports to the EU are likely to be affected.[2] As per the report prepared by the economic think tank Global Trade Research Initiative (GTRI), the impact on the export of iron, steel and aluminium products is likely to be high. It is also expected that the export of iron, steel and aluminium will be subject to an additional 20-35% taxes on account of the CBAM.[3]

1 Global Trade Research Initiative, 'The Carbon Border Adjustment Mechanism: EU's Climate Trojan Horse to Obstruct Imports' available at http://gtri.co.in/gtriFlagshipReports.asp
2 Steep rally in carbon prices and CBAM compliance requirements could pull down the profits of Indian steel exports to the EU by US$60 -165/MT between CY2026 and CY2034, available at https://www.icraresearch.in/Research/ViewResearchReport/5100
3 Supra note 1.
4 Article 6, REGULATION (EU) 2023/956 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of May 10 2023, establishing a carbon border adjustment mechanism.
5 Global Trade Research Initiative, CBAM Countdown: Preparing Indian Exporters for the Transition Period, available at http://gtri.co.in/gtriFlagshipReports.asp
6 India seeks Taiwan, S.Africa backing on the carbon border tax, available at https://www.livemint.com/economy/india-seeks-taiwan-s-africa-backing-on-carbon-border-tax-11686936697768.html
7 Supra note 5.

> ***"While, as per the EU, the CBAM is compliant with the World Trade Organisation (WTO) rules, India is considering challenging it before the WTO for creating trade barriers in the name of environmental protection and being non-compliant with WTO rules.***

Another issue about the CBAM will be concerning reporting compliances, which the importers will be responsible for undertaking. Failure to undertake the required compliances will result in penalties for the importers. The importers will be required to submit detailed reports (including various data and explanations) on carbon emissions concerning an imported item,[4] which would also include direct and indirect emissions involved therein.

Resultantly, it is expected that the concerned exporter will be required to submit thousands of data points, explanations and methods to the importers in the EU under the CBAM. It will require a proper understanding of the CBAM regulations containing complex processes.[5] The compliance requirement under the CBAM is cumbersome, which may be challenging for Indian exporters, especially the smaller ones.

While, as per the EU, the CBAM is compliant with the World Trade Organisation (WTO) rules, India is considering challenging it before the WTO for creating trade barriers in the name of environmental protection and being non-compliant with WTO rules.[6] One of the grounds on which CBAM can be challenged is the principle of common but differentiated responsibilities (CBDR), which states that owing to different levels of economic development, each nation has a common but different responsibility to address environmental protection issues.

One way of dealing with the impact of CBAM would be to introduce restrictions similar to the EU ETS in India. The Indian government has taken a step in this direction and proposed introducing the Carbon Credit Trading Scheme (CCTS) as part of India's environmental laws, which will be similar to the EU ETS. CCTS would allow the Indian exporters to claim a deduction of prices paid on carbon emissions under the CBAM.

Further, as a way forward, the Indian government, as a first step, should sensitise the concerned exporters and create awareness among them regarding the various compliances which would need to be undertaken by them under the CBAM mechanism.[7] Currently, there needs to be a standard procedure or mechanism to be followed for carbon emissions reporting in India. The government should formulate guidelines or policies for carbon reporting that identify the carbon emissions at each production level.

The concerned exporters will also be required to develop tools and frame standard policies to track carbon emissions and collect data on such emissions. Further, Indian manufacturers/ exporters should also consider adopting more efficient technologies and methods for producing goods, such as relying on renewable energy sources to reduce their overall carbon emissions. Implementing the CBAM may be a trade barrier for the concerned Indian exporters; however, its negative impact can be mitigated with well-designed strategies and approaches.

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PRE-PACK INSOLVENCY IN THE REAL ESTATE SECTOR – THE MUCH-NEEDED SAVIOUR

> Largely the introduction of Pre-Pack insolvency resolution plans in India is a step forward to provide an effective and efficient mechanism for resolving the financial distress of corporate entities

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The Central Government introduced the pre-packaged insolvency resolution process ("PPIRP or Pre-Pack") for corporate persons classified as MSMEsby amending the Insolvency and Bankruptcy Code, 2016 ("Code") and promulgated the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2021 on 4th April, 2021.

The Pre-Pack amendment was necessitated after COVID-19 pandemic and suspension of CIRP mechanism for a year-long period, which with the low consumer confidence and weak demand led to small businesses being stressed under various financial constraints. It is pertinent to note that PPIRP is specifically designed to assist a Corporate Debtor ("CD") in resolving its debts and starting over by way of restructuring of liabilities of the company by way of an agreement between the corporate debtor, creditors and other stakeholders.

THE PPIRP MODEL: INTERPLAY OF DEBTOR IN POSSESSION AND CREDITOR IN CONTROL

The Pre-Pack insolvency model is a hybrid model that combines features of both the formal resolution process under the Code and informal restructuring mechanism. Additionally, Pre-pack includes an interplay of the debtor-in-possession and creditor-in-control approach as the debtor would continue to oversee business activities during PPIRP, the resolution professional ("RP") is in charge of ensuring that the process is fair and transparent and in accordance with the law.

PPIRP allows for a quick and efficient resolution of the CDs financial problems, while also protecting the interests of its creditors against fraudulent and arbitrary conduct of the CD post initiation of PPIRP (Sections 67A and 77A of the Code). However, it is important to note that Pre-Pack is not a one-size-fits-all solution and must be carefully evaluated on a case-by-case basis.

ELIGIBILITY CRITEREA

A CD, classified as a MSME, in terms of sub-Section (1) of Section 7 of the Micro, Small and Medium Enterprises Development Act, 2006 read with relevant notification[1], qualifies to apply for the commencement of the PPIRP if it meets the following criteria:

a) default at least 10 lakh;

b) meets eligibility criteria under Section 29A[2] of the Code;

c) has not undergone the PPIRP 3 years prior to the initiation date;

d) has not completed the Corporate Insolvency Resolution Process (CIRP) 3 years prior to the initiation date;

e) is not undergoing a CIRP; and

f) has not been ordered for liquidation under Section 33[3] of the Code.

CIRP vs. PPIRP

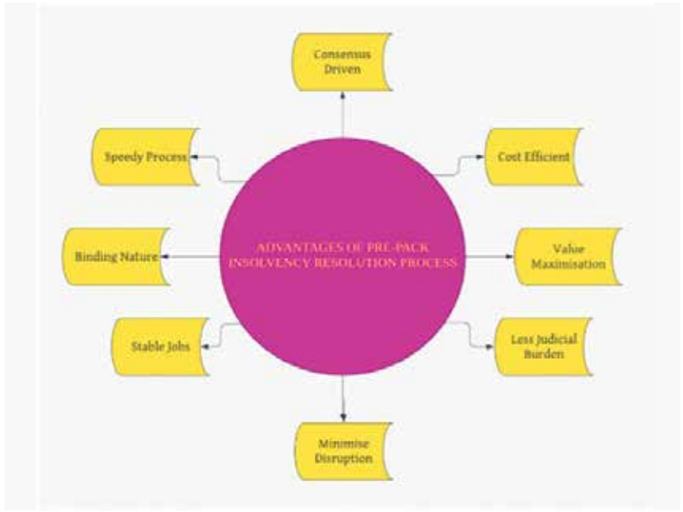
Unlike the CIRP model which follows the creditor in control approach, under the Pre-Pack model the management of the distressed company is allowed to retain control over the business operations, subject to supervision of an insolvency professional appointed by the creditors. This model is premised on the belief that the existing management of the distressed company has the best understanding of its operations and is, therefore, best placed to propose and implement a resolution plan that will maximize the value of its assets and preserve the interests of its stakeholders.

In order to ensure that the National Company Law Tribunal (NLCT) is not faced with a logjam between financial creditors in control versus debtor in control, the amendment by virtue of Section 11A[4] obliges the NCLT to dispose-of a PPIRP application before considering any applications for CIRP except where the PPIRP is filed 14 days after a CIRP application. The NLCT Bench at Delhi has dealt with the nitty-gritties and importance of the Section in depth.[5]

PPIRP can be initiated either by the corporate debtor or by its financial creditors, followed by the appointment of an insolvency professional (IP) to manage the affairs of the company. The IP then examines the financial position of the company and evaluates the feasibility of a base resolution plan.

If the IP determines that a base resolution plan is feasible, the debtor can submit it to the creditors for approval. The creditors then consider the resolution plan and may approve it with a minimum voting threshold of 66% of the voting share of the financial creditors. After which the resolution plan is submitted for approval with the NCLT, and on approval it is implemented by the debtor and monitored by the IP.

BENEFITS OF PRE-PACK INSOLVENCY



CHALLENGES TO PPIRP IN THE REAL ESTATE SECTOR

The real estate sector in India has been facing significant challenges, with many companies struggling to complete projects due to issues such as liquidity crunch, regulatory compliances, legal disputes etc.

This has resulted in delays and uncertainties for homebuyers, who have invested their hard-earned money in these projects. In such a scenario, the introduction of Pre-Pack specifically for the real estate sector can bring about a ray of hope to the present state of affairs.

Given that the debtors are in control in a Pre-Pack insolvency resolution process, real estate developers can register themselves as MSMEs to file for a resolution with the NCLT.

We see certain challenges with the process and few of them are as under:

1. **No clarity on status of MSME of a real estate company:** Since there are no prescribed guidelines for real estate/ project companies, this has created a conundrum for the real estate companies and the NCLT, if the companies actually qualify for resolution under Pre-Pack mechanism. A more structured approach with some guidelines will help resolving the issue since it is not uncommon in the close-knit real estate sector for developers to collaborate for resolving the other with some reliefs and concessions in case of a distress. Such a resolution is

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1 Refer to https://msme.gov.in/know-about-msme
2 https://www.indiacode.nic.in/show-data?actid=AC_CEN_2_11_00055_201631_1517807328273&orderno=34
3 https://www.indiacode.nic.in/show-data?actid=AC_CEN_2_11_00055_201631_1517807328273&orderno=39
4 https://www.indiacode.nic.in/show-data?actid=AC_CEN_2_11_00055_201631_1517807328 23& section Id=57215 &sectionno=11A&orderno=13#:~:t ext=(1)%2 0Where%20an%20 application%20filed,respect%20of%20the%20same%20corporate
5 Shailendra Kumar Agarwal and Ors. v. CDH Developers Ltd., CP. No. (IBPP)- 02(PB)/2022 (India).

a win-win situation for all the stakeholders including the homebuyers.

2. **Lack of Consensus:** Section 54A(e)[6] of the Code requires CD to obtain mandatory approval from financial creditors, not being related parties, representing not less than 66% within 90 days, which is practically an arduous task in real estate projects, owing to the lack of trust among homebuyers. This aspect also needs to be addressed by the government since it is the most crucial aspect of Pre-Pack of a real estate company.

3. **Appointment of IRP:** The role of the IRP is a significant area of concern in the implementation of a PPIRP. In a CIRP, the IRP is appointed as soon as the application is admitted. However, in a Pre-Pack scheme even though an IRP is involved by the creditors, the IRP is formally appointed by the NCLT only after the scheme has been finalized, presented before the NCLT and has received its approval. This delay in the appointment of the IRP could result in a lack of supervision and transparency during the Pre-Pack process. The absence of the IRP may raise concerns about the fairness of negotiations, the protection of the interests of all stakeholders, and the credibility of the entire process.

4. **Plain sailing Termination of PPIRP:** By virtue of Section 54N(4)[7], if due to fraudulent and preferential act of CD, the CoC decides to vest the control of CD with the RP, the PPIRP will immediately terminate, in which case company shall go for liquidation.

> ***"In order to ensure that the National Company Law Tribunal (NLCT) is not faced with a logjam between financial creditors in control versus debtor in control, the amendment by virtue of Section 11A obliges the NCLT to dispose-of a PPIRP application before considering any applications for CIRP except where the PPIRP is filed 14 days after a CIRP application.***

5. **Lack of Clarity on applications for initiation of CIRP once Pre-Pack resolution has been initiated:** Section 11A of the Code does not envisage a scenario in which the CD is in the process of availing the sanction from the financial creditors and one of the financial creditors files for CIRP to obstruct the application of PPIRP. However, NCLT Jaipur has shown some guidance in the matter of *Shree Rajasthan Syntex Ltd. v. SBI &Ors.*[8], and allowed an application for PPIRP, even though filed after 14 days of the application of CIRP under Section 7, and noted that preserving the corporate debtor as a going concern, while ensuring maximum recovery for all creditors is the prime objective of the Code.[9]

The major concern around the process involves absence of the shield of moratorium which is generally available under CIRP. This absence means that creditors may enforce their rights and remedies while the company is negotiating for a Pre-Pack scheme. This could create significant hurdles for the successful implementation of the PPIRP, besides the aspects highlighted hereinabove.

CONCLUSION

Largely the introduction of Pre-Pack insolvency resolution plans in India is a step forward to provide an effective and efficient mechanism for resolving the financial distress of corporate entities. By empowering the existing management to propose and implement a resolution plan, subject to the monitoring by an insolvency professional, the Pre-Pack model seeks to balance the interests of the company, its creditors, and other stakeholders and facilitate a successful outcome for all parties involved. It is expected that the Pre-Pack model will continue to gain popularity in India, as it provides a more streamlined and collaborative approach to resolving financial distress with flexibility of deliberations between CD and its financial creditors and the post-initiation which phase is aimed at value maximisation.

Pre-Pack insolvency can be a beneficial option for real estate developers in India by providing a faster and cost-effective process for resolving insolvency, as it can help preserve the value of the company's assets, protect the interests of stakeholders and enable the real estate developer to continue operating its business. Further, it provides a much-needed mechanism for fast-tracking the resolution process, and its success will depend on the cooperation and collaboration of all stakeholders involved.

To ensure the success of the PPIRP, the government must take steps to address the underlying issues faced by the real estate sector, including ensuring timely financing. Additionally, the legal system must be prepared to implement the PPIRP in a timely and efficient manner, more so with the proposed expansion to apply PPIRP on a broader range of CDs, as on January 18, 2023. Hence, sector specific regulations for real estate be also notified to streamline the process.

The recent proposal by the Ministry of Corporate Affairs to include a project-wise as well as reverse CIRP insolvency scheme for real estate projects can definitely be seen as a significant step in the right direction towards addressing the unique challenges posed by the behaviour of homebuyers, as compared to traditional financial creditors. This proposal is also a way forward towards acknowledging the judicial evolution of the two significant concepts that were laid down in the case of *Flat Buyers Association Winter Hills-77, Gurgaon v Umang Realtech Private Ltd through IRP & Ors.*[10] Moreover it also acknowledges the widely recognized fact that a uniform approach cannot effectively tackle the complexities of insolvency in the real estate sector, where each case requires individual attention. However, whether the concept of project-wise and reverse CIRP would also be applicable in the PPIRP proceedings, is still a grey area.

6 https://www.indiacode.nic.in/show-data?actid=AC_CEN_2_11_00055_201631_1517807328273&orderno=61
7 https://www.indiacode.nic.in/show-data?actid=AC_CEN_2_11_00055_201631_1517807328273&sectionId=57229&sectionno=54N&orderno=74
8 CP No. (IBPP)- 01/54C/JPR/2022.
9 Swiss Ribbons v. UOI, AIR 2019 SC 739 (India).
10 CA(AT)(Insolvency) No. 926 of 2019

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To Advertise, Or Not To Advertise That Is The Question

The CCPA, close to its establishment, acting under its executive jurisdiction, issued the "Guidelines for Prevention of Misleading Advertisements and Endorsements for Misleading Advertisements, 2022" ("Advertising Guidelines") to crack the proverbial nut, i.e. misleading advertisements.

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The symbiotic relationship of consumption and the consumer, with production and the producer has been well-exposited as early as the 1700s. Adam Smith has cogently described this relationship as *"Consumption is the sole end and purpose of production.* [1]

This fundamental interconnection is, unfortunately, seldom accorded its due consideration when issues concerning 'protection of the consumer' is being deliberated upon by the State.

The mode by which the producer communicates about his product to the public at large and potential consumers is through advertisement. Advertisements serve the purpose of educating and informing consumers about products and services so that they are in a position to make an informed decision regarding their consumption.

In 2024, it is expected that more than a trillion US Dollars would be spent on advertising by companies worldwide.[2] This underscores the importance of advertising in communicating information to consumers, and in promoting products and brands of companies.

This article endeavours to analyse the significance and role of advertisements from the perspective of a producer or advertiser, vis-à-vis the policies and law on consumer protection. The focus herein will primarily be on the guidelines pertaining to advertisement issued under the Consumer Protection Act of 2019 ("**2019 Act**")[3] for protecting Consumers from misleading advertisements, particularly in light of the regulatory authority's powers in this respect; and the implications of compensation under the 2019 Act.

Legislative background

There is no specific provision relating to rights of consumers under the Constitution of India, and the Seventh Schedule of the Constitution of India does not demarcate consumer protection under any of the Lists, and the entries there under. However, the rights of consumers are discernible from various provisions in the Constitution, most significantly, the right to receive free speech under Article 19(1)(a).[4] It is also pertinent to note here that the right to commercial speech is the other facet of Article 19(1) (a) (dealt with subsequently in this article). Further, various entries under the Union List in the Seventh Schedule of the Constitution, including carriage of passengers and goods by railways, ship or air, banking and insurance, and entries under the Concurrent

1 ADAM SMITH, THE WEALTH OF NATIONS (Prakash Books India Pvt. Ltd., 2023) (1776)
2 WARC, Global ad spend outlook 23-24, available at https://www.warc.com/content/feed/global-advertising-to-top-1-trillion-in-2024-as-big-five-attract-most-spending/en-GB/8558 last accessed on 1.10.2023
3 Act no. 35 of 2019
4 See also, Article 21 of the Constitution, which has been interpreted to subsume the people's right to know (Reliance Petrochemicals Ltd v. Proprietors of Indian Express Newspapers, AIR 1989 SC 190).

> *"The economic costs of product liability have been a point of contention over decades in foreign jurisdictions, and needs to be considered prior to penalising an advertiser to an extent that it dissuades the advertiser from engaging in business*

List including food adulteration, drugs, legal, medical and other professions, electricity and newspapers also pertain to consumer affairs, and accordingly, reflect the power to legislate on the same.

In furtherance of such power, the Consumer Protection Act of 1986 ("**CP Act, 1986**") was enacted invoking the residuary power of the Union *"to provide for better protection of the interests of the consumers"*[5]. The 2019 Act was enacted repealing the CP Act,1986,interalia, to protect the consumer from challenges posed by misleading advertisements, tele-marketing, multi-level marketing and to provide for swift executive interventions to prevent consumer detriment.[6] In sequitur, the 2019 Act is also intended to provide a speedier remedy to consumers. The Forums or Commissions established under the 2019 Act are established on the same principles as that of Tribunals, and are not bound by strict procedures. In order to hold a manufacturer liable, the 2019 Act provides for 'product liability action' and punitive damages.[7]

Advertisements and their regulation under the 2019 Act

The definition of "advertisement" in the 2019 Act[8] is similar to the definition of "advertisement" under various statutes, including the Food Safety and Standards Act, 2006, another legislation aimed at benefitting consumers.

5 Preamble to Consumer Protection Act, 1986 (Act no. 68 of 1986)
6 Statement of Objects and Reasons to the Consumer Protection Bill, 2018.
7 Section 2 (35) of the 2019 Act provides for definition of "product liability action" to include a claim for compensation in cases of 'deficiency of service.' Section 39 of the 2019 Act provides that the District Commission can also grant 'punitive damages.'
8 Section 2 (1) of the 2019 Act provides that "advertisement" means any audio or visual publicity, representation, endorsement or pronouncement made by light, sound, smoke, gas, print, electronic media, internet or website and includes any notice circular, label, wrapper, invoice or such other documents;
9 Section 10 - Establishment of Central Consumer Protection Authority. See also Section 18 - Powers and functions of Central Authority
10 Vide Notification -F.No. J-25/4/2020-CCPA (Reg) dated 9th of June 2022.

They were proposed to be regulated by the Central Consumer Protection Authority ("**CCPA**"), established under the 2019 Act for the purpose of regulating matters relating to violation of Consumer rights, unfair trade practices and false and misleading advertisements[9]. The CCPA, close to its establishment, acting under its executive jurisdiction, issued the "Guidelines for Prevention of Misleading Advertisements and Endorsements for Misleading Advertisements, 2022" ("**Advertising Guidelines**")[10] to crack the proverbial nut, i.e. misleading advertisements.

Under the Advertising Guidelines, the CCPA has accorded to itself the power to stipulate what an "advertisement should state or contain" so that it is not rendered misleading; and to be considered a valid advertisement, there by surreptitiously supplanting the definition for "misleading advertisement" under the principal statute, i.e. the 2019 Act.

This approach is problematic for several reasons. It is, for one, overly prescriptive. Advertisements are results of creative processes, with the objective of communicating to the ordinary consumer information regarding a product. They cannot be strait-jacketed into pre-determined moulds, such as too many restrictions under law on how an advertisement should be portrayed. The Advertising Guidelines impose conditions to be conformed to for an advertisement to be lawful. In other words, the Advertising

Guidelines approach the content to determine misleading advertisements conversely, by prescribing the formula to a non-misleading advertisement or a valid advertisement. Similarly, conditions for bait advertisements, surrogate advertising and advertisements pertaining to 'free' products are also prescribed.

Secondly, coupled with the overarching powers bestowed upon the CCPA under Chapter III of the 2019 Act (which includes the powers to regulate, powers of investigation and the power to impose penalties), the Advertising Guidelines also provides that *"In case of any ambiguity or dispute in interpretation of these guidelines, the decision of the Central Authority shall be final"*[11], thus making the CCPA the investigator, the complainant and the judge in matters pertaining to advertisements. Even censorship of films does not have to deal with such wide restrictions. Section 5B of the Cinematograph Act, 1952[12] provides for the Central Government to prescribe guidelines by which the Censorship Committee will be guided subject to the provisions contained in subsection (1) of 5B. Sub Section (1) of 5B reproduces Clause (2) of Article 19 (prior to the First Amendment) of the Constitution of India. The guidelines by which the Censor Board is guided on film certification limits itself to what would amount to objectionable content required to be censored or considered for certification for a film or cinematograph work, and does not venture into prescribing content that will make a feature film valid The Constitutional Bench of the Supreme Court in *K.A Abbas v. Union of India*[13] while upholding the validity of censorship of films under Section 5B of the Cinematograph Act 1952 stressed upon the observance of procedural safeguards by the executive which *"will make censorship accord with our fundamental law"*. Hidayatullah, J.'s words here on the approach of the Central Government in determining the content of a film for censorship are of seminal importance – *"We express our satisfaction that the Central Government will cease to perform curial functions through one of its secretaries in this sensitive field involving the fundamental right of speech and expression."*

Thirdly, the CCPA's mandate may be argued to be beyond the mandate of the principal Act. The definition of Consumer[14] under the 2019 Act excludes a purchaser (of goods or services) who avails of such goods or service for any commercial purpose from protection under the Act. This being the case, to cover all viewers of any Advertisement, not necessarily a 'consumer', under the application of the Act, through the provisions of the Advertising Guidelines, by way of delegation, may suffer from being beyond the Act itself.

An advertisement if deemed as "prejudicial to the interests of consumers as a class" is sufficient for invoking the jurisdiction of the CCPA.[15] The ambiguous use of the undefined phrase "interests of class of consumers" may be used by the authority, in this case, the CCPA, to take action relying on the principle of *parens patriae* and bring representative claims on behalf of the citizenry.[16] *Parens Patriae* actions are where the State itself is the plaintiff asserting a guardianship role to protect itself and its citizens from alleged harm. The CCPA, by virtue of acting on behalf of "interests of class of consumers" should not assume any such role, particularly on the basis of a hypothetical injury and intended harm from Advertisements as perceived by CCPA.

11 Guideline 15 of the Advertising Guidelines
12 Act No. 37 of 1952
13 AIR 1971 SC 481
14 See Section 2(7) of the 2019 Act
15 See Sections 10, 16, 17 and 18 of the 2019 Act
16 Parens Patriae actions are where the State itself is the plaintiff asserting a guardianship role to protect itself and its citizens from alleged harm. In India, parens patriae jurisdiction of the State have been involved in situations involving minors and persons of unsound mind incapable of taking decisions. See, for instance, Suchita Srivastava v. Chandigarh Administration, 2009 9 SCC 1. It may be noted that in the United States of America, parens patriae suits as an alternative to class action litigation rose significantly after the US Supreme Court ruling which acknowledged the role of state in mass torts (see Mississippi ex rel.Hoodv. AU Optronics Corporation.571 U.S. 161 (2014). These litigations have a significant number of concerns, such as settlements created by such (parens patriae) litigation targeting entire industries act as a form of regulation without the involvement of any legislature, thus creating concerns relating to separation of powers at the governmental level(seeDonald G. Gifford, Impersonating the Legislature: State Attorneys General and Parens Patriae Product Litigation, 49 B.C.L Rev.913, 914-16 (2008))

> *"Advertisements serve the purpose of educating and informing consumers about products and services so that they are in a position to make an informed decision regarding their consumption.*

Finally, various sectoral laws, including the Food Safety and Standards Advertising and Claims Regulations framed under the Food Safety and Standards Act 2006, the Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954, SEBI (Prohibition of Fraudulent and Unfair Trade Practices) Regulations, 2003, with Guidelines for Advertisements by Mutual Funds, Advertisement Code for Investment Advisers and Research Analysts, Insurance Regulatory and Development Authority of India (Insurance Advertisements and Disclosure) Regulations, 2021 etc, address issues pertaining to advertisements pertaining to their sector. Each of these regulations provide for independent governance mechanisms for determination of misleading, false or fraudulent advertisements along with necessary remedial measures, and enforcement mechanisms to rein in errant advertisers. The sectoral regulatory authority would be best suited to deal with misleading advertisements pertaining to their respective sectors, as they have the necessary expertise and wherewithal for the same.[17]

Whereas, the prescription-based approach under the Advertising Guidelines only abrogates the freedom of commercial speech and is against a catena of decisions of the Apex Court on the subject. In *State of Bombay v. F. N. Balsara*,[18] (which was quoted with approval in *Kesavanada Bharati Sripadagalvaru v. State of Kerala*,[19]) the prohibition of commending (i.e., advertising) any intoxicant was held to be void for being in conflict with the fundamental right guaranteed by article 19(1)(a). *In Indian Express Newspapers (Bombay) (Private) Ltd. and Ors v. Union of India and Ors*,[20] also the Court stated that commercial advertisements are protected under Article 19(1)(a) of the Constitution. In *Tata Press Ltd v. Mahanagar Telephone Nigam Limited and Ors*,[21] the Court, while explicitly and clearly holding that "commercial speech" is a part of freedom of speech and expression, emphasised that *"Advertising is considered to be the cornerstone of our economic system. Low prices for consumers are dependent upon mass production, mass production is dependent upon volume sates, and volume sates are dependent upon advertising. Apart from the lifeline of the free economy in a democratic country, advertising can be viewed as the life blood of free media, paying of the costs and thus making the media widely available."* The circulation of ideas is at the heart of the right to freedom of expression. And the 'attempt to regulate thought'[22] is not a function of the government. The freedom of speech encompasses the right of all citizens to read and be informed. The *United States Supreme Court, in Time v. Hill*[23] observed that the constitutional guarantee of freedom of speech and press are not for the benefit of the

17 It may be noted that the 2019 Act clarifies that the said Act is in addition and not in derogation to the provisions of other law, and the Advertising Guidelines also under the conditions for a valid advertisement stipulates that an advertisement complies with sector specific laws. In this situation, the possibility of parallel or dual proceedings, and multiple penalties for the same subject matter is bound to arise. Since the jurisprudence pertaining this issue alone is vast enough to be dealt with in separate publications, it has not been dealt with in thisarticle.
18 AIR 1951 SC 318.
19 (1973) 4 SCC 225
20 AIR 1986 SC 515
21 (1995) 5 SCC 139
22 SeeAmerican Communications Association v. Douds, 339 U.S. 382, 444.

press so much as for the benefit of all the people.

Advertisements, by virtue of being a product of commercial motive, are not disentitled to the constitutional protections as are available to other expressive commodities (such as movies, television shows etc.) The Hon'ble Supreme Court of India has also clearly recognised this. It is also a fact that advertisements are a persuasive feature of the modern public sphere, and they possess more power than most genres of expression to 'normalise contested ideas and beliefs' .[24] The result is that laws that restrict commercial advertisements, or limit what they can say, may pose a threat to the vitality of a democratic public sphere in the manner of censorship laws or repressive speech regulations.[25]

A plethora of cases dealing with the subject matter of the Advertising Guidelines, i.e. misleading advertisements, tell us that the determination of this aspect is very nuanced and ever-evolving. The primary contributor in India to the evolution and development of precedents surrounding misleading advertisements has been the industry itself. Industry self -regulation could be an advantageous complement to government policies.[26]

Compensation to consumers

While this is slightly tangential to the main focus in this article, i.e. misleading advertisements, issues pertaining to grant of compensation for various consumer complaints has reared its head quite pugnaciously of late, and has been briefly dealt with herein, in view of its relevance and significance.

The existence of provisions for punitive compensation has sadly encouraged speculative litigation and a lack of understanding of the principles governing award of punitive damages appears to have aggravated it. One of the most common themes for claiming exemplary damages by consumers for deficiency in goods or services appear to be on the ground of 'mental agony'. There are several examples of vexatious claims under the colour of mental agony. In *Manveer Singh Negi,*[27] the claimant allegedly found insects in a soft drink (clearly inspired by *Donoghue v. Stevenson*[28]) and the District Forum awarded a total damage of Rs.40,008/-. Although the State Commission subsequently set aside the award of Rs.35,000/- it upheld the award of Rs.8/- towards the cost of the soft drink, Rs.5000/- towards deficiency in service and Rs.10000/- towards damages against the seller. In a similar case, the District Forum at Chennai granted Rs.55,000/- on a complaint that insects were found in a brandy. The order shows that the product was not consumed.

There are similar illustrations galore. In a complaint regarding damage of hair upon using a shampoo, the manufacturer offered medical help and the complainant alleged that even after the treatment it was not cured, and she had to remove her hair. Against the claim of Rs. 10 lakhs as compensation for mental agony and harassment, the District Forum awarded Rs.25,000/-. The State Commission dismissed the appeal holding that the manufacturer did not prove that its product was good.[29] One would think that the complainant was obligated to prove that her hair was damaged because of the shampoo, in spite of the known fact that there was no similar complaint from any other consumer which proved that the product could be faulted.

23 1968 385 US 374
24 Genevieve Lakier, The First Amendment's Real Lochner Problem, University of Chicago Law Review: Vol. 87: Iss. 5, Article 2.
25 See Tovia Smith, Backlash Erupts After Gillette Launches a New #MeToo-Inspired Ad Campaign, NPR, available at https://www.npr.org/2019/01/17/685976624/backlash-erupts-after-gillette-launches-a-new-metoo-inspired-ad-campaign last visited on 01.10.2023
26 It may be argued that a robust industry operates more efficiently than an executive body in addressing disparaging or misleading content in product advertisements by virtue of a wider access to information and technical knowledge. Industry self-regulation is viewed as a more flexible instrument that can be more easily adapted to deal with changing conditions (SeeOECD Industry Self-Regulation : Role and use in Supporting Consumer Interests, 23.03.2015, available online at one.oecd.org/document/DSTI/CP(2014)4/FINAL/En/pdf last accessed on 16.10.2023.). Further, it has been seen that there are varying and contradictory views expressed by the courts as to what advertisements qualify as 'misleading or disparaging' taking into consideration the contextual background. SeePepsi Co. Inc. and Ors v. Hindustan Coca Cola Ltd and Ors., 2003 (27) PTC 305 (Del.) (DB).
27 Hindustan Coca Cola Beverage Pvt Ltd v Manveer Singh Negi, 2013 (4) CPR 47.
28 [1932] A.C. 562.
29 Procter and Gamble Home Products Ltd v Taranjit Kaur, 2014 (3) CPR 287.
30 See Samruddhi Coop Housing Ltd v. Mumbai Mahalaxmi Construction (P) Ltd, (2022) 4 SCC 103; See also Arifur Rahman Khan v. DLF Southern Homes (P) Ltd, (2020) 16 SCC 512where the Court propounded the position that award of compensation has to be based on a finding of loss or injury and must correlate to it.
31 See Joanna M. Shepherd, Products Liability and Economic Activity: An Empirical Analysis of Tort Reform's Impact on Businesses, Employment, and Production, 66 Vanderbilt Law Review 255 (2013)
32 See Keith N. Hylton, The Law and Economics of Products Liability, 88 Notre Dame L. Rev. 2457 (2013).

In another instance, we have an advocate filing a case for quantity difference in two glucose biscuit packets seeking Rs.8 lakhs as compensation alleging that the manufacturer sold the similar packets for the last 8 years. The variation was within the limits permitted under the Legal Metrology (Packaged Commodities) Rules, 1977. The Commission found that the complainant was only entitled to refund of the purchase price of Rs.16/-.

Only a few such cases pertaining to consumer protection under the said Act appear to have reached the Supreme Court. In these cases, the Supreme Court has clearly enunciated the principles for determination of damages. The court has generally refused to grant damages in cases of 'deficiency' in service unless cogent materials are produced to substantiate the loss.[30] The law of damages in India is well settled, as the Supreme Court has, time and again, reiterated. Only actual and direct damages suffered by the non-defaulting party could be claimed from the defaulting-party. Remote damages and punitive damages are an anathema to the law of damages. Notwithstanding the provision in the 2019 Act for punitive damages, the courts will be justified in restricting the punitive damages to cases where the defendant's conduct is reprehensible.

The economic costs of product liability have been a point of contention over decades in foreign jurisdictions[31], and needs to be considered prior to penalising an advertiser to an extent that it dissuades the advertiser from engaging in business. Alternatively, the transactional and economic costs, if unchecked, will lead to a point when a manufacturer or service provider will have to factor in the cost of compensation into the good or service itself.[32]

Conclusion

It is yet early days to comprehensively evaluate the issues which will arise in respect of the Advertising Guidelines, and the effectiveness of the CCPA in enforcing the Advertising Guidelines, as well as the CPPA's powers. The recent efforts by the Central Government inpassing the Jan Vishwas (Amendment of Provisions Act), 2023 is a positive step to decriminalising several offences in various statutes to further the cause of "trust-based governance for ease of living and doing business".

However, the very existence of the draconian and wide powers of the CCPA under the 2019 Act appears to run counter to the objective sought to be achieved under the Jan Vishwas Act.

One can only hope that the regulators will appropriately address more pressing concerns of late, including serious challenges to privacy arising from generative artificial intelligence, targeted marketing, and the like, which the current law and guidelines do not seem to address.

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Amendments In GST Laws From October 1 For ONLINE GAMING

Genesis And Implications

The GST amendments envisage a confiscatory tax regime on online gaming and may significantly reduce the user base of online gaming companies, forcing many to exit the market and leading to consolidation in this space

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KHAITAN &CO ADVOCATES SINCE 1911

For the past couple of years, the 'online gaming' sector has been under the scrutiny of the Goods and Services Tax (GST) department and perceived as a potential revenue generating sector. In this article, the authors discuss the impact of the substantive amendments that have been made to the Central Goods and Services Tax Act, 2017 (CGST Act) and Central Goods and Services Tax Rules, 2017 (CGST Rules) as well as the Integrated Goods and Services Tax Act, 2017 (IGST Act) to specifically tax the 'online real money gaming' sector.

Key events necessitating amendments to the GST laws

The GST department commenced investigations against the companies engaged in the 'online gaming' sector in the latter half of 2021. These companies were uniformly depositing GST at the rate of 18 % on the charges being collected by them in lieu of providing the online players and users access to their gaming platform or mobile gaming application.

The GST department, on the contrary, alleged that the companies engaged in 'online gaming' were not merely engaged in providing access to their gaming platform and mobile application. Instead, they are engaged in supplying 'actionable claim' to the online players in the form of chance to win in 'betting and gambling'.

On the foregoing basis, the GST department started issuing show cause notices to online gaming companies - one of the largest was issued to Gameskraft Technologies Private Limited (GTPL), demanding GST to the tune of INR 21,000 crores, along with interest and penalty.

GTPL challenged the show cause notice before the Hon'ble Karnataka High Court, which had quashed and set it aside. The Court acknowledged the arguments of the GTPL and held that the term 'betting and gambling' only connotes 'game of chance' and 'game of skill' are two separate class, and 'Rummy' played with or without stakes remains to be a 'game of skill'. In addition, it was also argued that gaming companies such as GTPL are online intermediaries and only provide facilitation services and are not engaged in supply of 'actionable claim'.

The Court quashed the said show cause notice and the INR 21,000 crore GST demand in a detailed order. This has now been appealed before the Supreme Court.

In the foregoing context, to dilute the arguments that have been upheld by the High Court, amendments have been made to the CGST Act and the CGST Rules.

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[1] The authors are representing Gameskraft Technologies before the Supreme Court in the INR 21,000 crore GST matter vis a vis online gaming.

"The Court acknowledged the arguments of the GTPL and held that the term 'betting and gambling' only connotes 'game of chance' and 'game of skill' are two separate class, and 'Rummy' played with or without stakes remains to be a 'game of skill'.

Key amendments in the CGST Act and the CGST Rules

Some of the key amendments made in the CGST Act and the CGST Rules are as follows. Amendments have also been made in the IGST Act vis a vis gaming platforms located outside India which have not been dealt with in this article.

Amendments to the CGST Act
Inserted a new Section 2(80A) – This provision defines 'online gaming' to mean offering a game over internet or electronic network.
Inserted a new Section 2(80B) –This provision defines 'online money gaming' to mean a game in which a player deposits money or money's worth including virtual digital assets in the expectation of winning money or money's worth including virtual digital assets, irrespective of whether the outcome is dependent on chance or skill or both.
Inserted a new Section 2(102A) – This provision defines the term 'specified actionable claim' to include actionable claims involved in online money gaming.
Inserted a proviso in the definition of the term "supplier" in Section 2(105) – This provision deems the online gaming company to be the 'supplier' of specified actionable claim involved in online gaming.
Amendment of Entry 6 of Schedule III of the CGST Act – This provision has been amended to state that 'actionable claims' are outside the scope of GST laws with the exception being that of 'specified actionable claims'.
Amendments to the CGST Rules
Inserted a Rule 31B – This is a new provision which provides for the valuation mechanism of online gaming and provides that valuation shall be done based on the amounts deposited with the supplier (online gaming company) by or on behalf of the player. Further, any amount returned to the player is not deductible. Explanation to Rule 31B, however, provides that in case the winning amount is redeployed for a fresh gameplay then, such redeployment shall not be treated as a fresh deposit.

The foregoing overview depicts sweeping amendments made in the framework to tax the online gaming sector.

Impact of the amendments

It appears that the settled distinction of several decades between 'game of chance' and 'game of skill' is sought to be done away with. Whether such amendments vitiate the legal principles evolved in various cases starting from the judgment in the case of RMD Chamarbaugwala v Union of India[AIR 1957 SC 699]may be tested in the coming days.

The fact that deeming provision in the definition of 'supplier' has been incorporated depicts that for the earlier periods, the online gaming companies were not a supplier of 'actionable claim'. Therefore, the demands raised for the earlier period ought to automatically fall, more so since the amendments do not seem to have been given a retrospective effect. Another perspective which may require examination in the coming days is the scope and ambit of a 'deeming' fiction. The question

as to whether a deeming fiction can operate to such an extent that an assessee is saddled with a liability of an amount which it never receives in the first place may need further clarification.

Rule 31B treats every amount deposited with the online gaming company as the basis for valuation of the supply, notwithstanding the fact that the amounts are not retained by the online gaming company. On the face of it, the very purport of the provision seems to be contrary to the well-understood concept of 'consideration' under law.

These amendments have been notified to come into effect from 1 October 2023 even though many of the States are yet to pass their corresponding amendments in their respective State GST statutes. This goes against the very fundamental premise of GST – 'one nation one tax' through simultaneous power of taxation with the Centre and the States which neither can unilaterally exercise (as per the Supreme Court) – this aspect may be vulnerable to a constitutional challenge soon.

"Rule 31B treats every amount deposited with the online gaming company as the basis for valuation of the supply, notwithstanding the fact that the amounts are not retained by the online gaming company

Conclusion

The GST amendments envisage a confiscatory tax regime on online gaming and may significantly reduce the user base of online gaming companies, forcing many to exit the market. This may further lead to job losses and funding freeze as well as consolidation in this space. Given the nature of these amendments, they may also be vulnerable to constitutional challenges before a court of law.

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ENFORCEABILITY OF ARBITRATION AGREEMENTS

ARISING OUT OF UNSTAMPED OR INSUFFICIENTLY STAMPED CONTRACTS

(The judicial journey and issues that must be addressed by the seven Judge Bench)

The Hon'ble Supreme Court (Supreme Court), seven Judge Bench heard the question of enforceability of an arbitration clause in an unstamped/ insufficiently stamped agreement. The Supreme Court by re-visiting the issue has re-opened the issue that had been settled by the Constitutional Bench of the Supreme Court earlier this year. This article aims to trace the judicial journey and bring to the fore some of the questions that should be considered by the Seven Judge Bench.

The Constitutional Bench of the Court in N.N. Global Mercantile Private Limited v. Indo Unique Flame Limited, (2023)7 SCC 1 (Five Judge Bench),held that in an India-seated arbitration, the statutory bar under Section 35 of the Indian Stamp Act,1899 which is attached upon instruments chargeable to stamp duty will be attached upon arbitration agreements as well. Consequently, this made an arbitration clause in an unstamped agreement 'non-existent, unenforceable or invalid.' However, considering the larger ramifications of the decision, the Supreme Court, referred the issue for reconsideration to a 7-Judge Bench which was heard and reserved by the Apex Court.

In relation to the stamping of instruments, the Constitutional Bench of the Hon'ble Supreme Court took the view, that an agreement will not be considered as a legally enforceable contract under Section 2(h) of the Contract Act, 1872 if it has not been duly stamped and this omission would not be seen as a "curable defect". Recently, this issue was referred to and heard by a seven Judge Bench of the Supreme Court.

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BACKGROUND

The case of NN Global supra arose between the parties out of a Work Order, a sub-contract, which provided for arbitration in cases of disputes. The Hon'ble Bombay High Court (High Court)held that as the Work Order was unstamped as per the Indian Stamp Act, 1899, the arbitration agreement contained within it, was unenforceable. Afterwards, the parties approached the Supreme Court and a 3-Judge-Bench of the Supreme Court while negating the legal position laid down in SMS Tea Estates (P) Ltd. v. Chandmari Tea Co. (P) Ltd, (2011) 14 SCC 66 and Garware Wall Ropes Ltd. v. Coastal Marine Constructions & Engg. Ltd., (2019) 9 SCC 209, applied the doctrine of separability to hold that in cases where the stamp duty is not paid, the underlying contract would not invalidate the arbitration agreement to render it void and non-existent in the eyes of the law. However, the Supreme Court doubted the correctness of certain findings rendered by a coordinate bench in Vidya Drolia v. Durga Trading Corporation (2021) 2 SCC 1 wherein the Court while affirming the findings of SMS Tea Estates supra and Garwaresupra, held that existence of a contract is intertwined with its validity and therefore, arbitration agreements arising out of invalid contracts with deficient stamp duty cannot be enforced. Subsequently, the Supreme Court referred the matter to a larger bench (Five Judge Bench) to settle the issue authoritatively.

LEGAL FINDINGS

The Five Judge Bench discussed various provisions, amongst others, provisions of the Arbitration and Conciliation Act, 1996, Indian Stamp Act, 1899 and Indian Contract Act, 1872. In relation to the stamping of instruments, the Court took the view, that an agreement will not be considered as a legally enforceable contract under Section 2(h) of the Contract Act, 1872 if it has not been duly stamped and this omission would not be seen as a "curable defect". However, the parties can act upon such unstamped/ insufficiently stamped documents, but it cannot be used as evidence for any purpose.

Previously as per SMS Tea Estates, arbitration clauses embedded in unstamped/ insufficiently stamped documents could not be acted upon as per Section 35 of the Indian Stamp Act, 1899. Post this judgement, Section 11(6A) in the Arbitration and Conciliation Act, 1996came to be inserted, which provided for a confined scope of adjudication limited to the determination of the existence of an arbitration agreement. The Five Judge Bench focused on the enforceability of the contract, rather than the literal existence of an agreement to arbitrate between the parties, in order to ensure minimal interference by the Courts. Lastly, while dealing with the principle of kompetenz-kompetenz, the Court rejected the argument that the issue of the sufficiency of stamping of agreements shall be dealt solely by the arbitrators and noted that the Court cannot wave off its responsibility as provided under law.

All in all, for a successful reference to arbitration, the underlying agreement must arise out of an enforceable contract and must satisfy all the requirements under the Arbitration and Conciliation Act, 1996, Indian Stamp Act, 1899 and Indian Contract Act, 1872.

> *"The Five Judge Bench focused on the enforceability of the contract, rather than the literal existence of an agreement to arbitrate between the parties, in order to ensure minimal interference by the Courts.*

CONCLUSION

While the matter has already been heard by the seven Judge Bench, there are certain issues which we feel the Court must consider while delivering the Judgment. The Supreme Court must consider the fate of all those arbitrations that arise out of unstamped agreements and pending at the stage of appointment of arbitrators. Further, questions of Interim Relief under Section 9 of Arbitration and Conciliation Act, 1996, challenging an Arbitral Award under Section 34 or enforcement of an Arbitral Award under Section 36 are left open and not touched upon by the Five Judge Bench. Moreover, considering the time consuming process employed in cases of post-impounding adjudication under the Stamp Act and the absence of any direction or guidelines mandating the officials to act in an expeditious manner, it appears that it is imperative that the parties ensure that the relevant stamp duty is sufficient and adequate before it proceeds with submissions on urgent reliefs/ emergency awards sought. To avoid such perils, parties should aim to mutually agree on the terms and complete the payment of the stamp duty during the negotiation process itself and additionally, re-examine the entire manner of incorporating arbitration clauses within contracts.

While the judgment of the Supreme Court is awaited, it is incumbent upon parties to make sure that the applicable stamp duty is paid on agreements containing an arbitration agreement. The need of the hour is to establish a balance between sufficiency of stamping and quick redressal of disputes through amendments in the statutes to harmonize the law that will be laid down by the Supreme Court in future.

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PTCL Amendment

Whether The Lesser Evil

While the 2023 Amendment may have been well intentioned so as to protect the marginalised, the GoK has in effect opened up a Pandora's Box which will now result in an over-burdened judicial system being made to handle a whole host of new cases.

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To protect the interest of the marginalised, The Karnataka Scheduled Caste and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978 ("**PTCL Act**") was enacted. It strictly prohibited transfer of lands granted to the marginalised, without the prior approval of the Government. The PTCL Act that was given retrospective application was however silent about any specific period within which an application had to be made for the restoration of granted lands.

In a matter concerning the restoration of land, the Supreme Court in 2017 in the case of ***Nekkanti Rama Lakshmi v. State of Karnataka and Ors.*** held that an application made under Section 5(1) of the PTCL Act to restore the granted lands was to be made within a 'reasonable period' and an application after 25 years could not be considered 'reasonable' under law. The Court relied upon ***ChhediLal Yadav v. Hari Kishore Yadav***[1] and ***Ningappa v. Dy. Commissioner and Ors.***[2] and reiterated a settled position in law that "whether statute provides for a period of limitation, provisions of the Statute must be invoked within a reasonable time.".

Subsequently, the Government of Karnataka ("**GoK**") brought in an amendment to the PTCL Act in 2023 ("**2023 Amendment**") concerning the time limit for making an application for restoration of granted lands to the original grantees. Through the 2023 Amendment, the GoK provided that 'limitation of time' would not be considered as a ground to accept or reject an application for restoration of the granted land.

While the 2023 Amendment may have been well intentioned so as to protect the marginalised, the GoK has in effect opened up a Pandora's Box which will now result in an over-burdened judicial system being made to handle a whole host of new cases. In a large number of cases, where lands have been transferred based on the settled position of Law, matters will be opened up and the transferees of the land will now have a Damocles sword hanging over them.

In several cases people claiming to represent the marginalised will use this opportunity to extract money from the transferees who will be in a vulnerable position. Infact the 2023 Amendment is likely to benefit those who were not intended to be its beneficiaries.

The SC through its 2017 judgment has reiterated that there cannot be a law which simply states that, 'wake up at any point of time and initiate a proceeding against a wrongdoer'. A reasonable period of limitation always exists, in the absence of a specified period of limitation in the Statute. The SC in the case of ***State of Punjab v. Bhatinda District Co-op Milk P. Union Ltd.***[3] also held that:

[1] MANU/SC/0781/2017
[2] (C.A. No. 3131 of 2007, decided on 14. 07 2011)
[3] MANU/SC/ 8017/2007
[4] WRIT APPEAL NO. 844 OF 2023 (SC/ST) Dated:03-08-2023

> ***"Even though, many State Governments in India have protected the marginalised and taken steps to prevent alienation of lands granted thereto, in most cases applications for the resumption of land are not being allowed where they are not being made within a reasonable period.***

> *"It is right that if no period of limitation has been prescribed, the statutory authority must exercise its jurisdiction within a reasonable period. What, however, shall be the reasonable period would depend upon the nature of the statute, rights, and liabilities thereunder, and other relevant factors."*

Even though, many State Governments in India have protected the marginalised and taken steps to prevent alienation of lands granted thereto, in most cases applications for the resumption of land are not being allowed where they are not being made within a reasonable period. The Courts in India have time and again maintained the importance of espousing ones rights within a reasonable period and have constantly tried to balance the rights of various stake holders.

Though, we are not aware of any proceedings questioning the constitutionality of the 2023 Amendment, pursuant to the 2023 Amendment, the Karnataka High Court in the case of ***Jayalakshmi and another Vs. the Deputy Commissioner, Tumakuru District and others***[4] rejected a request to restore land where the application had not been made within a reasonable period. The decision of the Karnataka High Court followed the 2017 decision of the Supreme Court and did not consider the 2023 Amendment, even then the same did not expressly declare the 2023 Amendment unconstitutional. This has compounded the uncertainty and is certainly going to result in a lot of litigation until the matter is finally settled by the Supreme Court. The concern is whether in seeking to ostensibly protect the marginalised, the GoK has caused more harm than it has done good.

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SUPREME COURT EXPLAINS WHAT QUERIES TO BE ASKED OF THE ACCUSED UNDER NI ACT IN CHEQUE DISHONOR CASE

The Supreme Court has reversed the acquittal of an accused in a cheque dishonor case, while reiterating the principles under Section 139 of the Negotiable Instruments Act, 1881.

A bench comprising Justice Aravind Kumar and Justice SVN Bhatti observed that there was a "fundamental flaw" in the approach taken by both the trial Court and the Punjab & Haryana High Court.

While summarizing the law and the mode of its rebuttal, the Court stated, "Once the presumption under Section 139 of the NI Act was given effect, the Courts ought to have proceeded on the premise that the cheque was issued in discharge of a debt/ liability.

The entire focus would then necessarily have to shift on the case set up by the accused since theactivation of the presumption has the effect of shifting the evidential burden on the accused."

It added, "The nature of inquiry would then be to see whether the accused discharged his onus of rebutting the presumption. If he fails to do so, the Court can straightaway proceed to convict him, subject to the satisfaction of the other ingredients of Section 138. If the evidential burden placed on the accused has been discharged, the complainant would be expected to prove the fact independently, without taking the aid of the presumption. The Court would then take an overall view based on the evidence on record and decide accordingly."

The Judges said that when the Court concludes that the signature in the cheque has been admitted and its execution proved, it should enquire two key points:

1. Has the accused led any defence evidence to prove and conclusively establish that there existed no debt/liability at the time of issuance of the cheque?

2. Has the accused proved the nonexistence of debt/liability by a preponderance of probabilities by referring to the circumstances of the case?

Citing the precedents set earlier, the Apex Court reiterated that when the complainant proves the execution of the cheque, the burden of proof shifts to the accused.

It explained, "Until this evidential burden is discharged by the accused, the presumed fact will have to be taken to be true, without expecting the complainant to do anything further."

The bench added that the standard of proof to discharge the burden of proof on the accused was not heavy and could be established through the preponderance of probabilities. The accused could either adduce direct evidence or through circumstantial evidence. Once both parties adduced evidence, the complainant cannot take refuge under Section 139 presumption.

Justice Kumar and Justice Bhatti stated that the issues framed by the trial Court were erroneous as the presumption under Section 139 was not applied. The accused did not discharge the burden of proof. Merely by raising suggestions during cross-examination, the burden of proof cannot be discharged. A probable defence must be set up.

"The fundamental error in the approach lies in the fact that the High Court questioned the want of evidence on the part of the complainant to support his allegation of extending a loan to the accused. It ought to have instead concerned itself with the case set up by the accused and whether he discharged his evidential burden by proving that there existed no debt/liability at the time of the issuance of the cheque," the Court held.

Thus, while setting aside the judgments of the Trial Court and the High Court, the Supreme Court convicted the respondent. It ordered him to pay twice the amount of the Rs.13,90,408 cheque. Failing to do so would earn him one year of imprisonment.

SUPREME COURT: UNDER UNITED COMMERCIAL BANK OFFICERS REGULATIONS, ACTION BEGINS ONLY AFTER CHARGESHEET

The Supreme Court has held that disciplinary proceedings can begin only after the service of a chargesheet and not a show-cause notice as per the United Commercial Bank Officer, Employees (Discipline and Appeal) Regulations, 1976.

The case pertained to a former officer of the UCO Bank who had faced disciplinary action even after reaching the superannuation age.

The Court reiterated the principles laid down in the UCO Bank v. RajenderLalCapoor (2007) 6 SCC 694 (RajenderLalCapoor-I), RajenderLalCapoor-II case, and the decision of the three-Judge bench in the Canara Bank v. D.R.P. Sundharam, (2016) 12 SCC 724 case.

The bench comprising Justice HimaKohli and Justice Rajesh Bindal reiterated that the 1976 Regulations could be invoked only if disciplinary proceedings had been initiated before the employee's service came to an end. Such proceedings could begin only when the chargesheet was issued and not merely upon issuing a show-cause notice.

In the RajenderLalCapoor-I case, it was held that "The departmental proceeding was not initiated merely on the issuance of a show-cause notice. It is initiated only when a chargesheet is issued. That is the date of the application of mind on the allegations leveled against an employee by the competent authority. The pendency of a preliminary disciplinary inquiry cannot be a ground for invoking Regulation 20 of the United Commercial Bank Officer's Service Regulations, 1979 on an employee allowed to superannuate. Only proceeding inter alia including, withdrawal of his pension or any other retiral dues under the applicable regulation, could have been initiated."

The Court also referred to RajenderLalCapoor-II's case, wherein it was held that the service of chargesheet was a sine qua non for disciplinary proceedings.

The Judges were hearing an appeal against the judgment of the Bombay High Court, which had allowed the retired bank employee's plea and overturned his dismissal from service.

The respondent had served as the assistant general manager at UCO Bank's main branch in Mumbai. He was scheduled to retire on 31 July 1991.

However, on 17 June 1991, he was served a memo seeking an explanation for the alleged irregularities and lapses on certain accounts during his tenure. On 15 July 1991, the General Manager (Personnel) used his authority under Regulation 12 of the 1976 Regulations to place him under suspension.

The officer filed an appeal against it, which was dismissed by both the appellate authority and the high Court.

On 3 March 1993, the disciplinary authority dismissed him from the service under Regulations 7(3) in conjunction with 4(d) of the 1976 Regulations.

This led the officer to file a statutory appeal, which was rejected by the appellate authority. Thereafter, he approached the high Court, which ruled in his favor, overturning his dismissal from service.

Aggrieved by the decision, the bank approached the Top Court.

The bench noted that Regulation 20 of the United Bank of India (Officers') Service Regulations, 1979, which was identical to the regulations involved in the present case, was previously held unconstitutional and void in the United Bank of India Officers Association's case.

The Judges stated that the case was later reviewed and decided again in the RajinderLalCapoor-II matter, wherein the Court clarified that Clause (iii) of Sub-Regulation 20(3) of the 1979 Regulations was an independent provision. It allowed the continuation of disciplinary proceedings, but only when such proceedings were initiated as per the Regulations of 1976.

The bench added, "The complete procedure for holding the disciplinary proceeding is provided only

in the 1976 Regulations. The 1979 Regulations would be attracted independently where no disciplinary proceeding is to be initiated. However, when read in the context of Regulation 20(3), initiation and pendency of disciplinary proceedings is a must. The 1976 Regulations provided for the mode and way the disciplinary proceeding is initiated. It expressly provides for service of the chargesheet, which is a sine qua non for disciplinary proceeding."

The Court noted that the bank officer reached the superannuation on 31 July, while the chargesheet was issued on 07 December. As a result, no disciplinary proceedings were pending against him at the time of his retirement.

Thus, the bench stated that there was no merit in the appeal, as the principles laid down were followed consistently. It imposed a fine of Rs.25,000 on the bank.

The Judges held, "As we have set aside the punishment order inflicted on the deceased employee, all service benefits due to him, along with interest at the rate of 7 percent per annum (from the date of his retirement till the payment is made), shall be paid by the appellant-bank to his legal heirs within three months."

SUPREME COURT REDUCES ANNUAL INCREASE IN LAND ACQUISITION COMPENSATION CITING 'PERIOD' AS DETERMINING FACTOR

The Supreme Court has set aside the order of the Punjab & Haryana High Court that enhanced the annual increase for determining compensation in a land acquisition case from 12 percent to 15 percent.

The division bench of Justice Vikram Nath and Justice Ahsanuddin Amanullah held that a 15 percent annual increase was excessive for a period of 11 years and reduced the rate to 8 percent with a cumulative effect.

The relevant facts included the issuance of a notification under Section 4 of the Land Acquisition Act, 1894 for the acquisition of land in Naraingarh, District Ambala, Punjab, for the benefit of the appellant, Central Warehousing Corporation.

Thereafter, on 19 March 2001, a declaration was issued. The Land Acquisition Collector, authorized to provide the award, determined the rate of compensation at Rs.3.50 lakhs per acre (equivalent to Rs.2,187.50 per Marla or Rs.72.31 per sq yard). This was considered as the prevailing market value on the date of the notification.

However, dissatisfied with the compensation, the respondent sought enhancement by filing a reference. The Reference Court allowed it and fixed the market value at Rs.6,310 per Marla (equivalent to Rs.208.59 per square yard). The calculation comprised a 12 percent annual increase for a period of 11 years (1989-2000).

Since both parties were dissatisfied with the decision of the Reference Court, they approached the Punjab & Haryana High Court, which, in its common impugned order, granted an annual increase at the rate of 15 percent.

Thus, the issue before the apex Court was on what rate the annual increase should be set. While the Reference Court applied a 12 percent flat rate increase, the high Court fixed a 15 percent cumulative increase.

Justice Nath and Justice Amanullah noted that the high Court had referred to the General Manager, Oil and Natural Gas Corporation Limited vs. Rameshbhai Jivanbhai Patel and Another case.

The bench observed that the Court determined the compensation based on an annual increase, but also cautioned that the increase could be considered for only 4-5 years. Beyond that, it would be unsafe to uniformly apply the same rate with cumulative effect.

The Top Court stated that the consistent view of the Court for awarding an annual increase varied from case to case, and the major factor to be considered was the period applied to it.

Thus, the Judges held that the fair and reasonable compensation be determined by applying an 8 percent annual increase with cumulative effect. The decision was based on the reasoning that the gap between the (11 years) valuation, was substantial. For 3-5 years, a higher rate of 10-12 percent might have been justified. But a 15 percent increase for 11 years, awarded by the high Court, was extreme.

The Supreme Court stated that the compensation was equivalent to what was awarded by the Reference Court. The High Courterred in enhancing the compensation.

Thus, the bench allowed the appeals while setting aside the judgment of the high Court. It directed the Land Acquisition Collector to re-calculate the compensation rate.

SUPREME COURT RULES AGAINST INVOKING LIMITATION ACT SECTION 5 TO EXTEND TIME LIMIT WHEN LESS PERIOD SET FOR SPECIFIC PURPOSE

The Supreme Court has held that Section 5 of the Limitation Act, 1963 cannot be used to extend the prescribed time limit when a lesser time is specifically provided for a particular purpose.

The bench of Justice Sanjay Kishan Kaul and Justice Sudhanshu Dhulia referred to Section 7 of the West Bengal Premises Tenancy Act, 1997, under which a tenant can file an application for protection against eviction.

The Act specifies that an extension of time for paying arrears of rent may be granted only once and for not more than two months. Section 40 of the Act states that the Limitation Act would apply to the proceedings and appeals.

The Judges observed: "We have no doubt over the proposition that though generally the Limitation Act is applicable to the provisions of the said Act in view of Section 40, if there is a lesser time period specified as a limitation, the provisions of the Limitation Act cannot be used to expand the same."

The case pertains to the respondent, a tenant in a shop in Calcutta, and the appellants, who were the landlords.

In 2005, the respondent stopped paying the rent, which led to the appellants filing a suit for eviction of the premises due to non-payment of rent.

The respondent filed applications under Sections 7(1) and 7(2) of the Tenancy Act, for protection against eviction. Since these were not within the window of the statutory period, the trial Court rejected the applications that were filed with a

Justice Sanjay Kishan Kaul and Justice Sudhanshu Dhulia

delay of 10 months.

The order was challenged by the respondent in the High Court, which directed the trial Court to dispose of the application under Section 5 of the Limitation Act. The respondent attributed the delay to improper advice by the advocate handling the matter.

The bench held, "A combined reading of the two statutes would suggest that while the Limitation Act may be generally applicable to the proceedings under the Tenancy Act, the restricted proviso under Section 7, providing a time period beyond which no extension can be granted, has to be applicable."

The Apex Court also observed that in a tenancy dispute where there was no disagreement on the amount of rent, all arrears had to be deposited.

The Judges remarked, "There is also a larger context in this behalf as the Tenancy Acts provide for certain protections to the tenants beyond the

contractual rights. Thus, the provisions must be strictly adhered to. The proceedings initiated on account of non-payment of rent must be dealt with in that manner as a tenant cannot occupy the premises and then not pay for it. This is so, even if there's a dispute about the rent.

The bench added,"The tenant is, thus, required to deposit all arrears of rent where there's no dispute on the admitted amount of rent and even in case of a dispute. It must be done within the time stipulated and should accompany the application filed under sub-sections (1) & (2) of Section 7. The proviso only gives liberty to extend the time once, and not exceeding two months."

The Court observed that there was no dispute about the respondent defaulting in paying the rent. The respondent neither paid the rent nor deposited it. The reasoning that improper legal advice led to not paying the arrears on time was frivolous.

Thus, the bench held, "The mere allegation of absence of correct legal advice cannot come to the aid of the respondent. As if such a plea would give a complete license to a tenant to occupy the premises without paying the rent and then claiming he was not correctly advised. If the tenant engages an advocate and abides by his advice, then the legal consequences of not doing what is required to be done, must flow."

The Top Court allowed the appeal, setting aside the order of the high Court and restoring the trial Court order. It also allowed the appellants to be compensated.

SUPREME COURT: CLAIMING LOSS OF PROFIT WITHOUT SUBSTANTIAL PROOF IN CONFLICT WITH PUBLIC POLICY


Justice S. Ravindra Bhat and Justice Dipankar Datta

The Supreme Court has held that the damages claim cannot result in an arbitral award without the claimant providing proof of suffering an injury.

The bench comprising Justice S. Ravindra Bhat and Justice Dipankar Datta emphasized the importance of substantial evidence in awarding claims for loss of profit while rendering an arbitral award as patently illegal and in conflict with 'India's public policy'.

Under Section 34(2)(b) of the Arbitration and Conciliation Act, 1996, an arbitral award may be set aside if the Court finds that the same conflicts with the Public Policy of India.

The appellant, Unibros, was awarded a work contract by the respondent, All India Radio (now termed Akashvani), to carry out the construction of Delhi Doordarshan Bhawan, Mandi House, Phase-II, New Delhi.

However, the work suffered a delay of over 42 months due to which disputes and differences emerged between the two entities These were subsequently referred to an arbitrator.

The arbitrator twice upheld the compensation claim of the appellant for the loss of profit.

When the first award was challenged before the High Court, it set aside the award, remitting it to the arbitrator for reconsideration. However, when the award was repeated, the appellant's claim was rejected by a single-Judge bench of the high Court. The division bench too refused to interfere with the decision.

Aggrieved by the outcome, the appellant approached the Apex Court.

The Judges observed that the decisions had interpreted the 'Public Policy of India' to include compliance with the fundamental policy of the Indian law, statutes, and judicial precedents, the need for judicial approach, compliance with natural justice, Wednesbury unreasonableness, and patent illegality.

The bench held, "Having read the second award, we have no hesitation to hold that it fares no better than the first award. It is equally in conflict with the public policy of India. It is, therefore, apparent that the factors that weighed in the arbitrator's mind in the first round and the second round are one and the same. It is elementary, though it must be restated that a judicial decision of a superior Court, binding on an inferior Court, must be accepted with grace by the inferior Court, notwithstanding that the decision may not be palatable."

In the first award, the arbitrator awarded compensation to the appellant for loss of profit. It was because of the delay in completing the work beyond the stipulated contract period caused by the respondent. It was against the stipulated contract period of 12 months.

The appellant was retained by the respondent for the execution of the work for an additional period of over three years leading to loss of the appellant's profit-earning capacity during the extension. This loss was worked out based on a profit allowance of 7.5 percent annually, which the arbitrator held was reasonable in a civil works contract.

However, aggrieved by the award, the respondent filed an objection before the high Court under Section 34 of the A&C Act. Thereafter, a single-Judge bench set aside the award. The claims were remitted to the arbitrator for reconsideration and for passing a fresh award.

In the second award, the arbitrator reiterated that the respondent failed to provide the complete site and drawings within the stipulated contract period, leading to the delay. It maintained the award for loss of profit and interest to the appellant vide the first award. The arbitrator also stated that the party responsible for the breach of the contract was liable for reasonably foreseeable losses.

Considering the appellant's status as an established contractor, handling substantial projects, the arbitrator assumed the appellant could earn profits elsewhere. Employing the doctrine that within a contract, the gains prevented qualified as a loss sustained, he held that the appellant was not required to establish the exact amount of gain or loss. He supposed that presenting the best available evidence under the circumstances would suffice.

While challenging the second award, the respondent filed a petition under Section 34 of the A&C Act. Herein, the single-Judge bench, vide its 25 February 2010 final order allowed the objection.

It rejected the appellant's claim observing that there was no sufficient evidence presented by the appellant to establish the claimed loss of profit.

Thereafter, the appellant appealed before the division bench of the high Court under Section 37. While dismissing the appeal, the bench held that no evidence was produced by the appellant to support the plea of loss of profit during the period when the work was prolonged. It stated that the findings returned by the arbitrator were contrary to law, particularly the Indian Contract Act, 1872, which governed such matters.

The Top Court expressed its dissatisfaction with the second award. It stated that the single-Judge bench while remitting the claim for reconsideration, warned the arbitrator not to be influenced by the factors weighing in his mind while making the first award. However, the arbitrator was expected to proceed only based on the evidence.

The bench held, "Yet, regrettably, the arbitrator ignored the judicial decision of the high Court with impunity."

On the appellant's claim for loss of profit, the Judges maintained that to support a claim for loss of profit arising from a delayed contract or missed opportunities from other available contracts, it was imperative for the claimant to substantiate the presence of a viable opportunity through compelling evidence.

The proof had to demonstrate that if the contract was executed promptly, the contractor could have secured supplementary profits utilizing its existing resources elsewhere.

Justice Bhat and Justice Datta reiterated that for claims related to loss of profit, profitability, or opportunities to succeed, a person was required to establish the following conditions:

a.) There was a delay in the completion of the contract.

b.) The delay was not attributable to the claimant.

c.) The claimant's status as an established contractor, handling substantial projects.

d.) Credible evidence to substantiate the claim of loss of profitability.

Thus, while citing that the condition of the evidence to substantiate the claim of loss of profitability remained unfulfilled, the appeal was dismissed by the bench.

IN CUSTOMS DUTY, UNDER-VALUATION OF GOODS PRICE MUST BE PROVED, ELSE BENEFIT OF DOUBT GOES TO IMPORTER: SUPREME COURT

The Supreme Court has pointed out that the transaction value (actual price paid/payable) for the goods should be the primary basis for customs valuation. Other valuation methods should be invoked sequentially only if there'sany doubt.

A Division Bench of Justice B.V Nagarathna and Justice UjjalBhuyan added that in such cases, the burden of proofto establish undervaluation is on the customs department.

The Court held, "If the department wants to allege under-valuation, it must make detailed inquiries, collect material and also adequate evidence. If the charge of under-valuation cannot be supported either by evidence or information about comparable imports, the benefit of the doubt must go to the importer. The charge of under-invoicing has to be supported by evidence of prices of contemporaneous imports of like goods."

The appellant had moved the Apex Court challenging the decision of the Central Excise and Services Tax Appellate Tribunal (CESTAT), which set aside the enhancement of the value of imported goods and the penalties imposed on the respondents.

The appellant contended that the respondents under-invoiced the goods and thereby evaded customs duty. They relied on export declarations from the Hong Kong Customs Authority to show that the actual value of the goods was higher than the declared value.

While denying the allegations, the respondentsargued that the statements of Yashpal Sharma and Suresh Chandra Sharma, the proprietor and co-director of the respondents' firm, respectively, were not voluntary, and therefore, could not be counted.

However, the Adjudicating Authority (AA) held that the export declarations filed by the supplier before the customs authority were reliable and the declared price was not correct. It held that the goods were liable for confiscation under Sections 111(d) and 111(m) of the Customs Act. However, as those were not available, no order for confiscation was passed.

The order was challenged by the respondents before the CESTAT, which set aside the enhancement of the value of the imported goods and the penalties imposed on the respondents.

The tribunal held that the appellantfailed to prove the under-invoicing of the goods by the respondents. It noted that the export declarations from Hong Kong were unattested photocopies, and the appellant did not provide any other evidence in support. It meant the appellant had not followed proper procedure in enhancing the value of the goods.

Though the appellants relied on the statements of the Sharmas, the latter retracted their statements maintaining that those were obtained under duress.

The Top Court observed that CESTAT had taken a correct decision.

The foreign supplier had also filed a second set of export declarations before the Hong Kong Customs Authority showing the correct price of the goods. This matched the price declared in the import invoices. At the initial stage, the department had accepted the second set of export declarations and imposed a penalty on the foreign supplier for price misdeclaration.

The customs department and the AA also relied on the statements of the Sharmas. However, the statements were retracted on the grounds that they were obtained coercively. The Additional Sessions Judge, Delhi, also mentioned in his bail order that the statement of the Sharmas may not have been voluntary.

The CESTAT refused to give credence to their statements and held that the value shown in the first set of export declarations could not form any reliable basis for value enhancement.

Thus, the Court, while observing the relevant precedents and legal provisions, stated that a customs officer was not a police officer and a person summoned underthe Customs Act was not an accused.However, a statement made under Section 108 was admissible in evidence and could be used against the person making the statement.

The bench emphasized that the statement must be recorded in a fair and judicious manner, free from duress or coercion.

The Judges quoted Section 14 of the Customs Act, which provides for the valuation of goods. They noted that the price at which the goods are ordinarily sold/offered for sale during international trade was the primary basis for valuation. However, the Central Government was also authorized to make rules for determining the price of goods and fix tariff values for any class of imported or exported goods.

Thus, while dismissing the appeals, the bench upheld the decision of the CESTAT. It stated that the customs department and the AA had wrongly rejected the import invoice prices without sufficient evidence, and their actions were unjustified.

SUPREME COURT UPHOLDS TELANGANA HIGH COURT VERDICT HOLDING VAT (SECOND AMENDMENT) ACT UNCONSTITUTIONAL

The Supreme Court has upheld the verdict of the Telangana High Court, which stated that the state Value Added Tax (Second Amendment) Act, 2017 was unconstitutional.

While hearing the appeals against the judgments of the Telangana High Court and the Bombay High Court, a bench comprising Justice S Ravindra Bhatand Justice Aravind Kumar ruled that the amendments were correctly held void for want of legislative power.

In July 2022, the Telangana High Court bench of then Chief Justice Ujjal Bhuyanand Justice P Madhavi Devi had set aside the amended VAT Act and notices issued under it. The judges had maintained that while bringing in the Goods and Services Tax (GST) regime, the intention of the Parliament was to avoid multiplicity of taxes by subsuming those indirect taxes in a single tax.

The High Court observed that after the 101st Constitution Amendment Act came into force in 2016, the State legislature's competence was truncated. Therefore, the latter did not have the power to legislate the Second Amendment Act. Once the VAT Act was repealed, except in limited categories, it could not be amended.

It further held that Section 19 of the Constitution Amendment Act was not a source of power to enable the State legislature to enact the Second Amendment Act, since it was a transitional provision.

Thus, the Apex Court ruled, "The ordinance's validity and effect might not have been suspected on the date of its promulgation; yet the issue is that when it was approved and given shape as an amendment, the State legislature ceased to possess the power. By that time, the State GST and the Central GST Acts had come into force (on 01.07.2017). Therefore, Section 19 ceased to be effective. The original entry (Entry 54 of the State list) ceased to exist."

The Top Court held:

i) Section 19 of the Constitution (101st Amendment) Act, 2016 and Article 246A enacted in the exercise of the constituent power, formed part of the transitional arrangement for the limited duration of its operation. It had the effect of continuing the operation of inconsistent laws for the period(s) specified, and by virtue of its operation, allowed state legislatures and Parliament to amend or repeal the existing laws.

ii) Since other provisions of the Amendment Act, had the effect of deleting heads of legislation, from List I and List II (Seventh Schedule to the Constitution of India), both Section 19 and Article 246A reflected the constituent expression that the existing laws would continue and could be amended. The source or fields of legislation, to the extent they were deleted from the two lists for a brief while, were contained in Section 19. As a result, there were no limitations on the power to amend.

HIGH COURT & TRIBUNAL NEWS AROUND THE NATION

DELHI HIGH COURT

DELHI HIGH COURT UPHOLDS PURO PINK SALT COMMERCIAL, DISMISSES TATA'S COMMERCIAL DISPARAGEMENT SUIT

The Delhi High Court refused to block a TV commercial aired by Puro about its pink rock salt in a lawsuit filed by Tata alleging commercial disparagement of its white salt.

While rejecting Tata's interim application, Justice C. Hari Shankar stated that Tata had failed to establish a prima facie case warranting intervention in the ongoing broadcasting of the commercial.

The Court observed that Tata is also ineligible for any injunctive interlocutory relief because, on the merits, the case aligns directly against Tata, as established by the Division Bench's judgment in Puro-I. Furthermore, the Court noted that the plaintiff's complaint omits the crucial fact that the very claims made in the disputed Puro commercial, which Tata deems as derogatory toward white salt, have been employed by Tata itself when promoting its Himalayan Pink Salt as a "healthy alternative" to white salt.

Justice Shankar said that the commercial falls well within the permissible boundaries of comparative advertising.

The Court stated that if an advertisement as unobjectionable as this one were to be subject to an injunction, it could lead to the complete abandonment of the concept of comparative advertising. It's challenging to imagine a more innocuous execution of comparative advertising than what Puro has demonstrated in this case.

The Court also noted that, at most, it could be argued that the preference for Puro's salt, despite the availability of white salt, was due to the perception that Puro's salt is a healthier option. The Court pointed out that it remains a subject of significant debate whether such a preference could lead to the inference that white salt is unhealthy.

"What Tata is doing is inferring, from the positive assertions in the impugned commercial, negative inferences regarding Tata's salt. There is prima facie substance in Mr.Sibal's contention that these inferences would require a leap of imagination, which an ordinary consumer would not undertake. At a prima facie stage at least, it is difficult for me to hold that all the positive assertions made with respect to Puro's Healthy Salt, in the impugned commercial, would inevitably result in a consumer reading, into those assertions, negative aspersions regarding Tata White Salt," the Court said.

Furthermore, the Court said that if Tata can sell its Himalayan Pink Salt by advertising it as natural, free of chemicals and additives, and a healthy alternative to common salt, then there is no reason why Puro cannot do the same.

Tata cannot seek an injunction against Puro using the same expressions to sell its Puro Healthy Salt that Tata uses to sell its own products, at least at this interlocutory stage. For both these reasons, Tata is also not entitled to interim relief in this matter.

The Court also stressed that Puro's right to advertise and market its product as "Puro Healthy Salt" should not be contested, provided there is no challenge to the registration of the trademark "Puro Healthy Salt" in its favour.

The Court said that Tata does not allege that Puro Healthy Salt misrepresents any facts in its commercial.

Tata was represented by Senior Advocates Dr Abhishek Manu Singhvi and Rajiv Nayar, along with PravinAnand, AchuthanSreekumar, Zafeer Ahmed, Rohit Bansal, and Apoorva Prasad.

Puro was represented by Senior Advocate AkhilSibal, along with a team from Khaitan & Co., including Partners NishadNadkarni and AnkurSangal, as well as Associates Khushboo Jhunjhunwala, Raghu Vinayak Sinha, Jaanvi Chopra, and Shaurya Pandey.

DELHI HIGH COURT: IT, ADMIN SERVICES BY SINGAPORE ENTITY TO INDIAN AFFILIATE DOES NOT CONSTITUTE FTS

The Delhi High Court ruled that the information technology and other administrative services provided by the respondent to its Indian affiliate could be considered Fees for Technical Services (FTS).

Justices Rajiv Shakdher and Girish Kathpalia found that the services offered by the respondent to its Indian affiliates did not qualify as FTS under Article 12(4)(b) of the Indo-Singapore Double Taxation Avoidance Agreement (DTAA), as they did not meet the "make available" criterion.

In the draft assessment order, the AO ruled that the services provided by the respondent to its Indian subsidiary were management support services, taxable at 10 per cent plus surcharge and education cess under the Indo-Singapore DTAA.

The respondent's objections to the draft assessment order were rejected by the Dispute Resolution Panel (DRP), leading to the final assessment order being passed by the AO under Section 143(3) read with Section 144C(13) of the Income-tax Act, 1961. The respondent then appealed the assessment order to the Tribunal.

The Tribunal ruled in favour of the respondent, finding that the services offered to its Indian affiliates did not qualify as FTS under Article 12(4)(b) of the Indo-Singapore DTAA, as they did not meet the "make available" criterion.

The department argued that the assessee provides professional advice to its Indian subsidiary, including studies, evaluation, report reviews, liaison work, key policy and business operations advice, HR management, and financial management. The Court upheld the Tribunal's order, holding that the agreement between the respondent/assessee and its Indian affiliate had been effective from January 1, 2010. The Court reasoned that if technical knowledge, experience, skill, and other processes had been made available to the Indian affiliate, as contended by the appellant/revenue, the agreement would not have lasted for so long.

NATIONAL COMPANY LAW TRIBUNAL

NCLT HYDERABAD: NCLT HAS JURISDICTION OVER EVICTION OF CORPORATE DEBTOR PREMISES DURING LIQUIDATION

The Hyderabad Bench of the National Company Law Tribunal (NCLT), comprising Judicial Member Rajeev Bhardwaj and Technical Member Sanjay Puri, has ruled that the NCLT is the appropriate forum to decide on matters concerning the eviction of premises owned by the Corporate Debtor during the liquidation process.

In 2013, Mohd Jamal Athemadnia (tenant) and Sagar Infra Rail International Limited (corporate debtor) signed a lease agreement for a property owned by the corporate debtor. The tenant operated its business from the property. The lease agreement expired in January 2020.

Following admission into the Corporate Insolvency Resolution Process (CIRP) by the NCLT, the Corporate Debtor was ordered into liquidation, and the Property became part of the liquidation estate.

The liquidator issued a sale notice for the property in 2021, and the tenant bid on it. However, the property was sold to another person on September 17, 2022, as stated in the sale certificate.

The liquidator subsequently filed an application under Section 60(5) of the IBC with the NCLT, seeking an order directing the tenant to pay rent arrears and vacate the property.

The Bench cited the National Company Law Appellate Tribunal (NCLAT) judgment in Adinath Jewellery Exports v Mr Brijendra Kumar Mishra and Ors., CA(AT)(Ins) No. 748 of 2023, which established that the NCLT is the proper forum for resolving matters arising during the liquidation process of a Corporate Debtor.

The case concerned an individual claiming to be a tenant under the Maharashtra Rent Control Act, despite having neither a signed agreement with the Corporate Debtor nor a valid Leave and License agreement. The NCLAT held that the NCLT has the proper jurisdiction to consider applications for the eviction of Corporate Debtor premises.

Citing the NCLAT judgment, the NCLT Hyderabad Bench directed Tenant Mohd Jamal Athemadnia to pay rent arrears and vacate the Property.

NCLT ALLAHABAD: RESELLER AGREEMENT WITH ASSURED PROFIT MARGINS NOT COVERED UNDER IBC'S FINANCIAL DEBT DEFINITION

The National Company Law Tribunal (NCLT) in Allahabad, consisting of Judicial Member Praveen Gupta and Technical Member Ashish Verma, dismissed a petition filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 (IBC) by Sole Proprietor Rajesh Alfred of Anand Enterprises to initiate Corporate Insolvency Resolution Process (CIRP) against Ketsaal Retail LLP (Corporate Debtor).

The Tribunal ruled that an agreement to resell products on an e-commerce platform (Amazon) for a guaranteed profit margin does not qualify as a "financial debt" under Section 5(8) of the IBC. The Applicant entered into a Reseller Agreement with the Corporate Debtor on December 7, 2020, investing ₹20 lakh with an assured return of 7 per cent per month. The Corporate Debtor handled all operational activities, even though the Applicant was authorised as the Reseller. The Corporate Debtor had full access to the Applicant's Amazon seller account and stored the products in its warehouse.

The investment amount was increased to ₹50 lakh in May 2021 with an increased profit margin of 9 per cent per month from August 2021. In January 2022, the investment amount was further increased to ₹1 crore with an increased profit margin of 12 per cent per month. The Corporate Debtor defaulted on the assured profit margins on December 1, 2021, and owes the Applicant ₹2.77 crore as of March 1, 2022. The Corporate Debtor contended that the agreement with the Applicant was not a loan, but a reseller agreement under which the Corporate Debtor provided its products to the Applicant for sale on Amazon.

Therefore, the Applicant and Corporate Debtor have no relationship, the outstanding amount is not a financial debt, and the petition is not maintainable, the Corporate Debtor argued.

The NCLT-Allahabad dismissed the petition, ruling that an agreement to resell products on an e-commerce platform (Amazon) with an assured profit margin does not qualify as a "financial debt" under Section 5(8) of the IBC.

The Tribunal found that the amount invested by the Applicant is not a debt, but a consideration to be received by the Corporate Debtor in advance for the supply of goods within 15 days. The return on the invested amount is a profit margin, not interest.

The NCLT placed reliance on the definition of "financial debt," which is defined as "a debt, along with interest, that is disbursed against the consideration for the time value of money and may include any of the events enumerated in the sub-clause (a) to (i)."

The Tribunal emphasised that it must be determined whether the amount paid by the applicant to the corporate debtor satisfies the other condition of disbursement against consideration of time value and money to meet the definition of "financial creditor," given that the corporate debtor raised the amount through a forward sale and purchase transaction under a reseller agreement with the commercial effect of a borrowing.

In this case, the agreement showed that the applicant and corporate debtor were a manufacturer and a reseller of products on Amazon. The applicant was entitled to a profit margin of 7 per cent and 9 per cent of the profit amount, which was to be determined and shared on the sale price of the product rather than the purchase price, as no time value of money was provided for earning this profit margin.

The nature of the transactions does not meet the definition of "financial creditor" under Section 5(8) because the "assured returns" are associated with the profit margin amount, which is unrelated to the requirement of the time value of money. Therefore, the time value of money is grossly missing in the present transaction, the Tribunal observed.

The Tribunal held that the e-commerce platform reseller agreement with assured profit margins did not confer the status of "financial debt" on the amount due to the applicant because the transaction lacked consideration for the time value of money, which is essential for meeting the requirements of the term "financial debt."

The Tribunal dismissed the petition filed under Section 7 of the IBC because the debt did not qualify as "financial debt" under Section 5(8) of the IBC.

BOMBAY HIGH COURT

BOMBAY HIGH COURT: FEES PAID TO CLUBS FOR CORPORATE MEMBERSHIP MEANT SOLELY FOR BUSINESS IS REVENUE IN NATURE

The Bombay High Court has held that the admission fees paid to a club towards corporate membership are wholly and exclusively for business purposes, and the same are revenue-generating.

The bench of Justice K.R. Shriram and Justice Rajesh S. Patil also noted that the expenditure incurred towards entrance fees and annual membership meant 'revenue expenditure', as it was incurred exclusively for business and not the capital account. Such expenditures facilitated running the enterprise efficiently and did not add to the profit-making apparatus of the business.

The bench was dealing with a writ petition filed by the petitioner/assessee Swiss Re Services India Pvt. Ltd, which received a reassessment notice stating reasons that the petitioner's income chargeable to tax had escaped assessment. The petitioner was directed to file an Income Tax Return (ITR) stating the entrance and subscription fees to Willington Sports Club (WSC).

The assessee contended that the expenditure incurred wholly and exclusively for the company's business was revenue in nature and was rightly claimed as a deduction.

However, the department viewed that such expenditure could not be termed revenue because it had an enduring effect, and the assessee would get the benefits of membership for years to come. It argued that the same had been incurred to bring into existence an advantage of enduring benefit to the business. Therefore, it should be attributable to capital expenditure.

The judges observed there was no basis on which the assessing officer believed that an amount of Rs.1,98,326 was paid towards entrance and subscription fees to WSC. Schedule 9 of the profit and loss account enumerated membership and subscription without mentioning the name of the club.

The Court, while rejecting the petition, added that the club membership fee of the employees was a pure business expense, hence, deductions were allowable under Section 37 of the Income Tax Act.

KERALA HIGH COURT

KERALA HIGH COURT RULES ON SARFAESI ACT INTERIM ORDERS AND ARTICLE 227 SUPERVISORY JURISDICTION

The Kerala High Court recently ruled that an order passed in an interim application under Section 18 of the SARFAESI Act is appealable to the Appellate Tribunal.

The Court then ruled that Article 227 of the Constitution cannot be used by it to interfere with a decision of the Tribunal, which had properly considered the matter before it. Justice K. Babu stated that Article 227 of the Constitution gives the High Court the power to intervene only in cases of grave injustice or failure of justice, such as when a court or tribunal assumes jurisdiction it does not have, fails to exercise jurisdiction it does have, resulting in a failure of justice, or exercises jurisdiction in a way that exceeds its limits. "It is trite that whenever the Tribunal has considered the matter in its proper perspective and where the impugned order shows the application of mind by the Tribunal, this Court will not entertain a petition under Article 227 merely because another view could have been taken," the Court observed.

A firm's managing partner borrowed ₹10 crore from a bank and mortgaged a property in Kottayam, Kerala, as security. After the loan became an NPA, the bank initiated proceedings under the SARFAESI Act to sell the property. The partner challenged the recovery proceedings before the Debts Recovery Tribunal (DRT), which granted an interim stay. The DRT later dismissed the partner's plea, and the bank issued a notice under the SARFAESI Act proposing to sell the property. The bank also approached the CJM Court for the appointment of an Advocate Commissioner to take possession of the properties, which was allowed.

The partner filed a plea before the High Court seeking direction to the bank to consider his request for a one-time settlement, but later withdrew the plea and filed it before the DRT along with an interim application seeking a stay of the measures taken under the SARFAESI Act. The DRT dismissed the application.

The partner has filed the present plea under Article 227 of the Constitution, arguing that the interim order passed by the DRT is not appealable under Section 18 of the SARFAESI Act and that the Tribunal did not consider the fundamental principles of ad-interim relief. The bank has argued that the interim order is appealable and that the CJM Court satisfied the requirements of Section 14 of the SARFAESI Act while passing the order. The Court began by reviewing Sections 17 and 18 of the SARFAESI Act and noted that any order made by the Tribunal in a proceeding under Section 17 is appealable to the Appellate Tribunal.

The Court further stated that the High Court should exercise its power under Article 227 sparingly, only to correct serious failures of duty, blatant abuses of power, or violations of fundamental principles of law or justice. On the question of whether the Tribunal had exercised its jurisdiction properly in this case, the Court noted that the petitioners had challenged the proceedings initiated by the bank before the DRT on the grounds that the bank had not complied with the mandatory requirements of the SARFAESI Act.

The petitioners also alleged that the affidavit filed before the CJM violated Section 14 of the Act because the bank's authorised officer had not declared the total amount of financial assistance granted to the petitioners or the total claim, nor had they declared that the bank held a valid and subsisting security interest in the petitioners' properties. The petitioners further contended before the DRT that the date on which the affidavit was attested had not been mentioned.

After reviewing the facts of the case, the Court found that the inquiry conducted by the CJM under Section 14 of the SARFAESI Act did not adjudicate the parties' rights regarding the subject matter. The Court found that the Tribunal could not have concluded that the CJM had not taken a judicial approach to verifying the affidavit and documents. The Court dismissed the plea and ruled that the order passed by the DRT was not appealable under Article 227 of the Constitution. It also held that the Tribunal had not exercised its jurisdiction improperly. The Court allowed the petitioners to pursue their claims in the appropriate statutory forum.

GUJARAT HIGH COURT

GUJARAT HIGH COURT INVALIDATES ARBITRAL AWARDS AMIDST NBFC'S ONE-SIDED ARBITRATOR CHOICES

The Gujarat High Court has invalidated and annulled three arbitral awards in cases where non-banking financial companies (NBFCs) independently nominated sole arbitrators. The Court's ruling is in consonance with the position of the Supreme Court regarding Section 12(5) of the Arbitration and Conciliation Act, 1996.

Justice Bhargav D Karia noted that the Supreme Court has established that an individual with a vested interest in a dispute or its outcome is disqualified not only from serving as an arbitrator but is also prohibited from nominating someone else as an arbitrator. In each of the petitions, it is acknowledged that the arbitration clause granted the respondent NBFC the unilateral authority to designate the sole arbitrator, and accordingly, the Sole Arbitrator was unilaterally appointed, contrary to the Supreme Court's decision regarding Section 12(5) of the Act in conjunction with its Seventh Schedule.

"Therefore, even though the petitioners are required to challenge the award under Section 34 of the Act, the petitioners have been able to show exceptional circumstances and bad faith on the part of respondent NBFC to invoke the remedy under Article 226 and 227 of the Constitution of India whose ambit is broad and pervasive," Justice Karia observed.

Drawing from the precedent set in Bhaven Construction v. Sardar Sarovar Narmada Nigam Ltd., (2022) I SCC 75, the Court affirmed that, given the extraordinary circumstances as evident in the specifics of these cases, these petitions were considered rather than directing the petitioners to seek the suitable remedy under Section 34 of the Act.

This ruling was delivered in a petition where the petitioners contested the awards issued by the Sole Arbitrator appointed by the first respondent, an NBFC. The grounds for the challenge were that the arbitration awards were made ex parte by the Sole Arbitrator and that the Sole Arbitrator could not have been unilaterally designated by the first respondent, in accordance with well-established legal principles.

The petitioners stated that they had received financial support from the respondent NBFC but were incapable of repaying the outstanding sum. As a result, the respondent instigated arbitration proceedings by designating a Sole Arbitrator to address the dispute between the parties.

During the arbitration process, the Sole Arbitrator issued a notice in three Special Civil Applications. However, the legitimacy of this notice was challenged in Special Civil Application No. 17868 of 2022. Due to the shared jurisdictional concern surrounding the competence of the Sole Arbitrator in all the petitions, the Court opted to hear them collectively. As a result, a consolidated court order was issued to resolve these cases.

The Court observed that there was a blatant breach of the principle of natural justice, as well as certain procedural flaws in how the arbitrator carried out the proceedings and issued the contested awards. It also held that it became evident from the records that the arbitrator's approach to the case did not provide the petitioners with a fair opportunity to present evidence, especially in light of the acknowledged fact that, upon reviewing the contested awards, the issues were not properly defined during the arbitration process, and no explanations were provided for the determination of the claim amount.

The Court, therefore, concluded that it was apparent right from the beginning, starting from the appointment of the sole arbitrator, that the proceedings were tainted, and as a result, the challenged ex parte arbitral awards are not tenable.

The Court, in quashing and nullifying all three Special Civil Applications, declared that the disputed awards should be annulled. The respondent NBFC is permitted to initiate new proceedings in adherence to the established legal principles, as elucidated by the Division Bench of this Court in the Pahal Engineers case. They may appoint an arbitrator with the petitioners' consent or seek this Court's intervention under Section 11 of the Act.

NCLAT

NCLAT: CCI APPROVAL PRIOR TO RESOLUTION PLAN CONSENT BY COC IS 'DIRECTORY'

The New Delhi bench of the National Company Law Appellate Tribunal (NCLAT) has dismissed the appeals filed against the 28 April 2023 order of the National Company Law Tribunal (NCLT). The order had stated that the approval by the Competition Commission of India (CCI) on 15 March was as required under Section 31(4) of the Insolvency and Bankruptcy Code (IBC), 2016.

In the Soneko Marketing Pvt. Ltd. vs. GirishSriramJuneja&Ors case, the bench comprising Justice Ashok Bhushan (Chairperson) and BarunMitra (Technical Member) held that Section 31(4) of IBC meant that though the CCI approval was 'mandatory', the approval, prior to the approval of the Committee of Creditors (CoC) was 'directory'.

On 21 October 2021, the Corporate Insolvency Resolution Process (CIRP) was initiated against Hindustan National Glass & Industries Ltd (Corporate Debtor). Independent Sugar Corporation Ltd and AGI Greenpac Ltd submitted their resolution plans to the Resolution Professional (RP) agreeing that CCI approval was mandatory before the CoC approval.

The RP clarified that the resolution applicants could obtain CCI approval after CoC approval but before filing the resolution plan with the NCLT.

On 27 September 2022, AGI Greenpac applied to the CCI for approval. On 30 September 2022, Independent Sugar received CCI's approval, while AGI Greenpac's application was declared invalid on 22 October. The CoC had approved AGI Greenpac's resolution plan with a 98 percent vote share on 28 October and Independent Sugar received 88 percent votes. AGI Greenpac applied in Form-II to CCI for approval on 03 November 2022.

In November 2022, the RP filed an application before the NCLT Kolkata, for the resolution plan approval under Section 30(6) of the IBC. Thereafter, Independent Sugar filed an application seeking to overturn the selection of AGI Greenpac's resolution plan. On 15 March 2023, the CCI approved AGI Greenpac's combination proposal, and the RP presented the order to the Adjudicating Authority (AA). Meanwhile, Independent Sugar's application was rejected by NCLT.

On assessing the matter, the NCLAT allowed the appeal and held that Section 31(4) of the IBC meant that though the approval by the CCI was 'mandatory', the CCI approval prior to the approval of the CoC, was 'directory'.

The tribunal interpreted the provisions in two segments. One, it referred to the combination under the Competition Act, 2002 wherein approval was mandatory prior to the approval of the plan by the CoC to take care of the adverse effect on the competition. Two, whether the requirement of approval by the CCI prior to the approval of such plan by the CoC was 'mandatory' or 'directory'.

Section 31: Approval of the resolution plan reads:(4) The resolution applicant shall, pursuant to the resolution plan approved under sub-section (1), obtain the necessary approval required under any law for the time being in force within a period of one year from the date of approval of the resolution plan by the AA under sub-section (1) or within such period as provided for in law, whichever is later.

Provided that where the resolution plan contains a provision for combination, as referred to in Section 5 of the Competition Act, the resolution applicant shall obtain the approval of the CCI under the Act prior to the approval of the resolution plan by the CoC.

The NCLAT observed that as per the timelines of the Competition Act and the CIRP, the resolution plan submission, and CoC approval in the IBC, it was not clear when CCI would grant the approval. The CCI had to act as per the statutory provisions of the Competition Act, and it has been given 210 days to take a decision.

The tribunal pointed out that if it held that prior approval of the CCI was mandatory before the CoC's consent, it would lead to incongruous results. The CIRP couldn't be frozen or put on halt because an application was submitted before the CCI leading to an adverse effect on the CIRP. Thus, even if the requirement was held as 'directory', it meant that the provision of Section 31(4) was complied with.

It added that it cannot be held that since the provision was there, the CCI approval had to be obtained prior to the approval of the plan by the NCLT. Various NCLAT judgments laid down that the approval by the CCI, prior to the CoC approval was 'directory', as there were no consequences provided for its non-compliance.

Subsequently, the RP clarified that the approval could be obtained even after the CoC approval. It was in accordance with the prevalent legal position as settled by the NCLAT in the Arcelor Mittal and other such cases.

Thus, the bench stated that the request for a resolution plan (RFRP) provided that CCI's approval had to be obtained prior to the approval of the plan by the CoC. Therefore, Independent Sugar had the right to challenge the NCLT order.

NCLAT CLARIFIES: AS PER ONE-TIME RESTRUCTURING AGREEMENT, THE DATE OF EVASION WOULD BE APPLICABLE, NOT NPA DEFAULT PERIOD

The Principal Bench of the National Company Law Appellate Tribunal (NCLAT) has dismissed the appeal filed against the Mumbai Bench of the National Company Law Tribunal's (NCLT) order of 09 June 2023. The order admitted the Corporate Insolvency Resolution Process (CIRP) application under Section 7 of the Insolvency and Bankruptcy Code (IBC), 2016, against Syntex Trading & Agency Pvt Ltd (Corporate Debtor).

In the Pradeep Madhukar More vs. Central Bank of India case, the bench comprising Justice Ashok Bhushan (Chairperson) and Barun Mitra (Technical Member) held that if the bank entered into a One-Time Restructuring (OTR) Agreement with the Corporate Debtor, the date of default for the purpose of Section 10A of the IBC would be the date of default in the OTR proposal and not the original/Non-Performing Asset (NPA) default date.

The Corporate Debtor had defaulted on three-term loans thrice on 30 September 2020 and on 29 December 2020, was ascertained as NPA.

As per the 06 August 2020 Regulation Framework for the Covid-19 pandemic, the OTR proposal was requested by the Corporate Debtor. It was sanctioned on 21 May 2021 by the Central Bank of India by executing the OTR and the Corporate Debtor was granted an 'interest moratorium' of 16 months on loans availed, and for 'principal moratorium' granted a period of 18 months.

The Corporate Debtor defaulted under the OTR Agreement in making the payment of principal and interest amount. On 04 May 2022, the bank sent a default notice calling the Corporate Debtor to make the payment towards the outstanding dues. The bank filed an application under Section 7 of the IBC claiming a total due of Rs.420,13,90,040.

The Mumbai Bench of the NCLT had admitted the CIRP

application against the Corporate Debtor and held that the petition was not barred by Section 10A.

But the NCLAT dismissed the appeal and held that if the bank entered an OTR Agreement with the Corporate Debtor, the date of default for the purpose of Section 10A of the IBC would be the date of default in the OTR proposal and not the original/NPA default date.

The tribunal observed that Section 10A of the IBC was inserted to prevent corporate persons experiencing distress from being pushed into insolvency proceedings. The Section implied that the initiation of CIRP under Sections 7,9 and 10 of the IBC was prohibited for any default occurred during the Section 10A period.

Moreover, Clause 48 of the Reserve Bank of India (RBI) Circular was only meant for downgrading the NPA for the relevant date. It was not relevant to finding out the event of default, which occurred under the OTR Agreement and was the foundation of the CIRP Application.

The bench emphasized that as per Clause H of the OTR Agreement, restructuring was granted to the outstanding original loans. The CIRP application was filed based on

default on 31 March 2022 as per Clause 8.1 of the OTR Agreement. Further, the date of NPA was 29 December 2020 as per Clause 48 of the RBI Circular dated 06 August 2020. Therefore, the default did not fall under Section 10A.

The NCLAT held that the bank had the right to file CIRP under Section 7 of the IBC as it was not related to any default committed during the Section 10A period. Instead, it was filed for a default that occurred on 31 March 2022 under the 21 May 2021 OTR Agreement.

CONSUMER DISPUTES REDRESSAL COMMISSION

CONSUMER COMMISSION ORDERS ASIANET TO PAY COMPENSATION FOR DEFICIENCY OF SERVICE

The Kozhikode District Consumer Disputes Redressal Commission (CDRC) presided over by P.C. Paulachen (President), V. Balakrishnan (Member), and Priya (Member), held Asianet Satellite Communication Ltd. liable for deficient service for disconnecting the complainant's digital TV connection even after she had paid the annual subscription fee of ₹2,600. The Commission rejected Asianet's objection to jurisdiction, which argued that the matter fell under the Telegraph Act. The Commission noted that the Consumer Protection Act provides additional remedies for consumers and does not override other laws.

Vasantha P subscribed to a digital TV (set-top box) service from Asianet for the period from September 2015 to August 2016, paying an annual subscription fee of ₹2,600. However, her TV connection stopped working in December 2015. Despite repeated complaints to Asianet, the issue remained unresolved, causing her mental anguish, pain, suffering, and inconvenience. She therefore filed a complaint with the Kozhikode District Consumer Disputes Redressal Commission (District Commission), seeking a refund of the subscription fee and compensation of ₹1,00,000 for the hardships she endured.

Asianet objected to the complaint, arguing that it fell under the Telegraph Act and was therefore not within the jurisdiction of the District Commission. They claimed that the complainant had requested to move her TV connection to a newly constructed house, which required routing the cable through multiple properties and obtaining permission from the property owners. Asianet maintained that without such consent, they could not provide the requested connection to the new address. They stated that the set-top box was temporarily disconnected upon receipt of the shifting request, but was later reactivated at the complainant's old address.

The District Commission overruled Asianet's objections while asserting that the complaint was indeed admissible under the Consumer Protection Act, 1986. It underlined that the provisions of this Act provide additional remedies for consumers and do not override other laws. Therefore, the Commission had jurisdiction to hear the complaint alongside other relevant laws, including the Telegraphs Act.

Additionally, the District Commission established that Asianet had breached its service obligations. The complainant had paid the annual subscription fee in advance for the period from September 2015 to August 2016, but her TV connection stopped working in December 2015. Despite repeated complaints, Asianet failed to resolve the issue promptly, causing the complainant mental anguish, suffering, and inconvenience.

As a result of its findings, the District Commission ordered Asianet to pay the complainant ₹20,000 in compensation for the mental anguish and inconvenience she had suffered. Additionally, it was ordered to pay ₹5,000 as the cost of the proceedings.

AUTHORITY FOR ADVANCE RULINGS

E-COMMERCE OPERATOR EXEMPT FROM GST ON THIRD-PARTY RIDE-HAILING: KARNATAKA AAR

The Karnataka bench of the Authority for Advance Rulings (AAR) had determined that M/s. Juspay Technologies Pvt. Ltd. (the applicant), an e-commerce operator, was not obligated to gather and forward GST on ride-hailing services offered by third parties.

In the aforementioned case, the applicant functioned as a technology services provider, facilitating connections between merchants and payment aggregators and gateways. Additionally, they introduced the 'NammaYatri' app on the ONDC platform, offering a ride-hailing Software as a Service (SaaS) platform tailored specifically for the auto-rickshaw community in Bengaluru.

The applicant had submitted a request for an advance ruling to ascertain their classification as an 'e-commerce' operator under the Central Goods and Services Tax Act (CGST Act) and Notification No 17/2017.

Furthermore, they sought clarification regarding the nature of supply under Section 9(5). Their inquiry revolved around whether services provided by service providers to their customers through the 'NammaYatri' app constituted supplies by the applicant and whether the applicant bore the responsibility for collecting and remitting GST on these services.

The two-member AAR bench consisting of M.P. Ravi Prasad (representing the State) and T. Kiran Reddy (representing the Central authority) noted that an Electronic Commerce Operator (ECO) refers to any individual who possessed, operated, or oversaw a digital or electronic infrastructure or platform designed for electronic commerce, encompassing the provision of goods, services, or digital products via a digital or electronic network.

In the present case, the applicant possessed a digital platform in the form of the 'NammaYatri' app for delivering services. Consequently, the applicant unambiguously met the criteria and could be classified as an Electronic Commerce Operator.

The bench, however, clarified that the applicant, owing to their distinctive business model, primarily acted as a facilitator in connecting the auto driver with the passenger.

Their involvement ceased once this connection was established. They did not manage the payment collection process, exert control over the actual delivery of the service by the service provider, retain information about the specifics of the ride, nor operate a control room or call centre.

Furthermore, the bench observed that the provision of services occurred independently of the applicant, and the applicant's role was limited to identifying the service provider without assuming any responsibility for the operational aspects or the successful completion of the ride.

Consequently, it was determined that the supply of services did not transpire through the electronic commerce operator but, instead, took place independently.

As a result, the ruling established that the applicant fell within the definition of an e-commerce operator but did not align with the nature of supply as defined in Section 9(5) of the CGST Act, in conjunction with notification No. 17/2017 dated June 28, 2017.

The supply made by the service provider (the individual who subscribed to NammaYatri) to their customers (who were also subscribers to NammaYatri) through the applicant's computer application did not constitute a supply by the applicant.

Consequently, the applicant was not obliged to collect and remit GST on the services provided by the service provider to their customers through the applicant's computer application.

LEGAL UPDATES FROM ACROSS THE GLOBE

United States of America

HOGAN LOVELLS EXPANDS PRESENCE IN NEW YORK AND OTHER MARKETS WITH THE APPOINTMENT OF 30 PARTNERS

Global law firm Hogan Lovells recently announced that it will be welcoming more than 30 partners from Stroock & Stroock & Lavan, including some of the country's most renowned commercial real estate lawyers, as well as first-tier New York litigation and transactional attorneys. The group comprises lawyers from Stroock's offices in New York, Washington, D.C., Miami, and Los Angeles.

The mass hiring of lawyers from Stroock & Stroock by Hogan Lovells is seen as a coup for the latter firm after the merger talks between the two law firms failed.

According to reports, the merger talks began in early 2023 and ended in August without a deal due to “strategic differences” between the two firms.

When Hogan Lovells CEO Miguel Zaldivar was reappointed to his position in September, he articulated the firm's commitment to expansion in key markets, such as New York by attracting high-performing lateral groups who recognise Hogan Lovells as a premier destination for top-tier talent.

“This is a premier group of extremely talented lawyers who will significantly expand our presence in New York, as well as add to our real estate capabilities in other important markets. We are on a mission to grow in the U.S., and this is an outstanding opportunity to deliver on our strategy to invest in premium practices and expand our client relationships,” Hogan Lovells CEO Miguel Zaldivar said.

Zaldivar added: ”Culturally, this group is very aligned with Hogan Lovells—our commitment to putting our clients at the centre of everything we do is consistent with their representation of top financial institutions, corporations, investment funds, and professional services firms.”

The Stroock team comprises industry-leading real estate attorneys with a prominent national presence and a dominant position in New York City across all facets of commercial real estate. This includes their representation of various clients, such as developers, institutional investors, sovereign wealth funds, Fortune 500 companies, financial institutions, and REITs.

“This elite group fits extremely well with our firm—particularly with our top U.S. REITs practice, which recently completed the largest REIT merger transaction ever, our nationally recognized sports practice, and our top tier EMEA real estate practice,” David Bonser, Managing Partner for the Corporate team, Americas stated.

The Stroock group also significantly enhances Hogan Lovells' commercial litigation services in New York, bringing with them a wealth of experience representing leading financial services, professional services, and other companies and clients in a wide range of high-stakes litigation, including securities litigation, class actions, and state AG matters.

In addition to its commercial litigation prowess, the Stroock group also includes highly regarded transactional lawyers who have structured some of the largest and most complex transactions in history in areas involving commodities, derivatives, and energy transactions. This follows on the heels of the recent transformative growth of Hogan Lovells' corporate practice in the New York office, which welcomed eight new lateral M&A and corporate partners in the last two years.

Among the lawyers joining Hogan Lovells are those with vast experience in government contracts, bid protests, and public policy.

“We looked carefully at several attractive options to grow our practices. We chose Hogan Lovells because of its top-ranked REIT practice, which is a unique opportunity for our real estate lawyers, and because the firm is well known for handling sophisticated litigation matters and complex, multijurisdictional transactional matters. And as one of the very few truly integrated global law firms, Hogan Lovells has a culture that is attractive to us,” Jeff Keitelman, who has served as co-managing partner of Stroock and co-chair of the firm’s Real Estate Group, said.

Keitelman added: ”The group of attorneys joining the firm is proud of the success we’ve had serving our clients and building premier, market-leading practices. We are confident that Hogan Lovells, with its platform of unmatched depth and breadth in the market, is the right place for us to serve our clients and grow our practices, and we are excited to do so with our new friends and colleagues.”

The partners join Hogan Lovells in mid-November, subject to the closing of their agreements.

DENTONS EXPANDS VENTURE TECHNOLOGY PRACTICE WITH BRYAN NATALE'S ARRIVAL

Dentons has announced the addition of partner Bryan Natale to the firm's Venture Technology and Emerging Growth Companies practice, based in the Boston office. Natale brings a wealth of transactional expertise to the table, offering strategic solutions that harmonise with his client's objectives and business goals.

Natale serves as legal counsel for emerging growth technology companies, assisting them in a diverse range of transactional affairs. This includes venture capital investments, growth equity transactions, mergers and acquisitions, debt financings, licensing and outsourcing deals, as well as matters related to securities and corporate governance. Natale's clientele extends beyond tech companies to encompass private equity sponsors, venture capital funds, financial institutions, privately held middle-market enterprises, and private equity-backed portfolio companies. His wide-ranging client portfolio encompasses various industry sectors, such as technology, financial services, software, healthcare and life sciences, industrial and manufacturing, media, marketing, food and beverage, retail, consumer products and the cannabis industry.

“As our practice continues to experience rapid growth, Bryan’s arrival underscores our strategic commitment to take advantage of market opportunities to continue to expand our footprint and capabilities in the venture and emerging growth companies market worldwide,” said Victor H. Boyajian, global chair of Dentons’ Venture Tech practice.

“We are fortunate to have a broad and diverse tech client base to leverage our global platform and innovative chops to attract top talent and grow in a competitive market even in the face of broader economic headwinds. Our confidence and swagger are getting the attention of the marketplace as it comes to

learn more about our differentiated service offering. Bryan’s energy and sector focus align perfectly with what we have been building,” Boyajian added.

Natale's inclusion in Dentons comes during a period of remarkable expansion for the firm's renowned Venture Technology and Emerging Growth Companies practice. In this time, venture-backed and private equity-sponsored emerging growth companies, as well as well-established publicly traded firms, have increasingly turned to Dentons for comprehensive guidance on the intersection of financial, strategic, innovation, intellectual property, and global regulatory matters.

Over the past three months, Dentons' Venture Technology and Emerging Growth Companies practice has expanded significantly, welcoming talents such as Matthew Gruenberg in New York, LiLingPoh in Silicon Valley, Christopher Tillson in Miami, Richard Hayes in New York, Jason Woolmer in New York, Frank Caratzola in New York, and Christina Austria in Washington, DC.

United Kingdom

WHITE & CASE NAMES INIGOESTEVE AS EXECUTIVE PARTNER IN LONDON

White & Case has appointed InigoEsteve, a capital markets attorney, as the new Executive Partner of its London office.

Esteve assumed the role on November 1, succeeding international arbitration partner DipenSabharwal KC, who has been heading the London office since the beginning of 2022 and was recently appointed to White & Case's global executive committee.

“I am very pleased to announce Inigo as the new office executive partner in London,” said firm chair Heather McDevitt.

“I also want to thank Dipen for his leadership of the London office, which continued to be successful during a period of considerable global uncertainty,” McDevitt added.

These appointments are part of a broader leadership reorganisation at White & Case. This reorganisation saw McDevitt, a commercial litigator based in New York, assume the role of chair at the beginning of September, succeeding long-serving leader Hugh Verrier.

Esteve joined White & Case as a partner in 2014, joining from Clifford Chance. In his role, he provides guidance to issuers, their shareholders, and investment banks on equity capital markets transactions conducted on the London Stock Exchange and various other exchanges across the EMEA region.

Esteve expressed his enthusiasm for assuming the role of executive partner in London. He noted the significance of the White & Case team in London, which operates within one of the world's foremost financial centres and serves as the global hub for English law. Esteve also highlighted that international clients depend on the team to assist them with their most critical affairs.

“I look forward to working with our executive committee, partners and other colleagues to ensure the London office continues to be a significant contributor to the wider success of our firm, and of our clients, in the years ahead,” Esteve said.

UK TRIBUNAL APPROVES CLASS-ACTION LAWSUIT AGAINST GOOGLE FOR AD TECH ABUSE

The UK's Competition Appeal Tribunal has approved the consolidation of two multi-billion-pound claims against Google for its alleged abuse of its dominant position in the advertising technology market.

The two class-action claims against Google for advertising technology abuse, brought by Charles Arthur and Claudio Pollack, will now be consolidated and proceed to a certification hearing in January 2024. Both claims seek to represent website publishers and app developers who have allegedly suffered losses due to Google's abuse of its dominant position.

By approving the consolidation of the claims, the CAT avoids deciding which claim should be certified and proceed to trial individually. This allows the claimants to present a single, unified case with a united team of experts and counsel, saving time and costs for everyone involved.

Consolidating class-action claims is not a simple task. Other significant claims have faced similar challenges, such as the Trucks Cartel claim across 17 European jurisdictions, which included two putative class claims in the UK alone.

Earlier this year In the FX litigation, there was a carriage dispute between two competing applications for a collective proceedings order (CPO). The Court of Appeal ultimately ruled in favour of one of the applicants, which meant that the other applicants were deselected.

The two class-action claims against Google will be consolidated through a special-purpose vehicle called Ad Tech Collective Action. The two class representatives will serve as partners in a limited liability partnership chaired by Kate Wellington, a consumer rights champion.

Claudio Pollack criticised Google's alleged abuse of its dominant position in the advertising technology market, which is the subject of various legal proceedings around the world. Google has vigorously defended itself against these allegations. Pollack said that the consolidation of the two class-action claims into a single limited liability partnership (LLP) will give UK publishers the best possible chance of obtaining justice.

In a joint statement, Luke Streatfeild of Hausfeld, Toby Starr of Humphries Kerstetter, and Damien Geradin of Geradin Partners said the UK Competition Appeal Tribunal's ruling to consolidate the two class-action claims against Google sets an important precedent, allowing the litigation supported by Fortress Investment Group, a subsidiary of third-party litigation funder Fortress, to proceed without delay.

The trio added that publishers have been losing significant revenue from advertising for nearly a decade due to Google's conduct. This class-action lawsuit, which is free to join for publishers, is the best way for them to obtain fair compensation.

KIRKLAND & ELLIS EXPANDS LONDON OFFICE WITH ADDITION OF PROMINENT DEBT FINANCE LAWYERS

Kirkland & Ellis has announced the addition of prominent debt finance lawyers Ian Barratt and Sinead O’Shea as new partners in the London office.

Jon A. Ballis, Chairman of Kirkland's Executive Committee, expressed his delight in welcoming Barratt and O’Shea to the team, highlighting their well-established reputation as top-of-the-market finance lawyers. He said they bring significant experience in handling sophisticated financing transactions for private equity sponsors and other corporate clients.

Barratt focuses on representing private equity firms and their portfolio companies in a variety of intricate domestic and cross-border acquisition financing, as well as other leveraged finance transactions.

His exceptional expertise has earned him broad recognition as a top finance lawyer. He holds a Band 1 leading lawyer ranking for banking and finance in Chambers UK and is honoured as a "Hall of Fame" lawyer for acquisition finance in The Legal 500 UK.

O'Shea has garnered extensive experience in a wide array of leveraged finance transactions and syndicated facilities, with a particular focus on infrastructure finance.

Her accomplishments include being recognized as a leading lawyer for acquisition finance by The Legal 500 UK, IFLR1000's UK Women Leaders, and receiving accolades at Legal Week's "Women, Influence & Power in Law U.K." awards.

BROWN RUDNICK EXPANDS BANKING DISPUTES PRACTICE IN LONDON WITH HIRE OF SENIOR PARTNER

Brown Rudnick has hired a senior partner Derval Walsh from Mishcon de Reya in London to bolster its disputes bench. Walsh has joined the US firm's litigation and arbitration practice as a partner after 13 years at Mishcon, where he was head of finance and banking disputes.

His arrival comes as Brown Rudnick continues to restock its London office following team departures and follows commercial litigation partner Robin Pickworth joining the team earlier this month from Armstrong Teasdale.

"Derval has a stellar reputation and his experience acting in high-profile and high-stakes commercial and banking disputes, some against household name banks, complements our practice group. The addition of Derval on the heels of Robin Pickworth will help to ensure that our clients benefit from world-class disputes advice," Neill Shrimpton and Jane Colston, co-heads of Brown Rudnick's litigation and arbitration practice in London, said.

Walsh provides counsel on disputes related to a wide range of financial instruments, including loan notes, securitisations, syndicated loans, sovereign debt, and interbank money market debt. Their expertise extends to engagements in both English and international courts, as well as various arbitration forums.

Notable recent cases involve representing The ECU Group in Commercial Court proceedings, where they pursued legal action against several HSBC entities for unlawful foreign exchange trading practices. Additionally, Walsh acted on behalf of Duet Group in proceedings initiated by Barthélemy Holdings.

Before becoming part of the Mishcon de Reya team, Walsh gained professional experience at White & Case and the legacy firm Herbert Smith Freehills. This experience included training and qualification in the legal field.

"I am thrilled to be joining Brown Rudnick's bench of litigators, which is well known for being one of the best on both sides of the Atlantic", Walsh said.

"As disputes against banks for poor governance become increasingly common, Brown Rudnick's relationships with institutional investors will ensure that the firm continues to be a go-to advisor for these types of disputes. This aligns well with my practice, and I look forward to collaborating with my new colleagues across the firm," Walsh added.

Korea

BAKER MCKENZIE EXPANDS IN KOREA WITH KL PARTNERS JOINT VENTURE

Baker McKenzie, one of the largest law firms in the world, is set to significantly expand its offering in Korea after forming a joint venture with KL Partners, a high-profile Korean corporate and disputes firm. The joint venture, which was announced in October 2023, is expected to launch in early 2024 and will be known as Baker McKenzie KLP JV. The new firm will have over 20 lawyers, making it the largest international law firm in Korea by partner bench strength. Its team of lawyers will offer clients international and Korean legal advice spanning areas including energy and infrastructure, cross-border arbitration and litigation, and corporate and M&A.

Baker McKenzie has been present in Korea for over 30 years, but the joint venture with KL Partners will mark a significant expansion of the firm's offering in the country. KL Partners is one of the leading law firms in Korea, with a strong reputation in corporate law, M&A, and disputes.

The joint venture is expected to benefit both Baker McKenzie and KL Partners. Baker McKenzie will gain access to KL Partners' expertise in Korean law and its deep network of clients. KL Partners will gain access to Baker McKenzie's global reach and its expertise in international law. The joint venture is also good news for businesses operating in Korea. It will provide them with access to a wider range of legal services from a single provider.

The formation of Baker McKenzie KLP JV is a significant development for the legal market in Korea. It is a sign of the growing importance of the Korean market to international law firms and of the increasing demand for cross-border legal services. Its 20-plus lawyer team will offer clients international and Korean legal advice spanning areas including energy and infrastructure, cross-border arbitration and litigation, and corporate/ M&A.

Milton Cheng, Global Chair of Baker, expressed that within KL Partners, they have found a comprehensive firm with a robust client base, synergistic practice areas, and a common set of values.

"Providing a 'one-stop shop' approach in Korea, coupled with our presence in key markets that are important to Korean business will be a game changer for us and our clients in a market that remains an economic powerhouse and one that is opening up further to international investment, including in our own sector," Milton Cheng said.

The joint venture (JV) will be jointly led by Seoul-based Baker McKenzie partner Jae-HyonAhn and KL Partners managing partner Beomsu Kim. Won Lee, the Hong Kong-based head of Baker McKenzie's Korea practice, will also coordinate the JV with the firm's Korea teams located in other jurisdictions.

Baker McKenzie described the joint venture as a combination of two market-proven practices: its own energy and infrastructure development and financing outbound practice, and KL Partners' cross-border disputes and inbound corporate practices. This signifies a substantial augmentation of Baker's presence in Seoul, where the firm currently has two partners, Ahn and Albert JoonKyo Chung, who specialise in the energy and infrastructure sector. In contrast, KL Partners boasts a team of 21 lawyers, including six partners.

Won Lee emphasised that Korea holds significant importance as a market for many of their multinational clients. Therefore, expanding their service offerings for these clients through this joint venture is a logical and strategic move. "We will now have a much greater ability to support our Korean multinational clients with their legal needs in Korea as well as other jurisdictions, and hence provide local law capabilities in all key markets across Asia, positioning the firm as the first choice for legal support when expanding across the Asia Pacific region," Won Lee said.

KL Partners' Kim added: "As we have worked to secure official approval for our joint venture and bring our two firms together, we have been impressed by the growth-focused mindset that Baker McKenzie has brought to the process. With their global reach, practice expertise and world-class client base, we are excited about what the future holds for our joint venture and clients."

Africa

ADNA EXPANDS FINANCE AND PROJECTS TEAM WITH THE ADDITION OF GHITA BENNIS

ADNA, a Pan African law firm, has announced the appointment of Ghita Bennis as Counsel in their Finance and Projects practice, specialising in French-speaking Africa. This strategic addition underscores the firm's commitment to strengthening its Finance and Projects division. Bringing an extensive background in structured finance, project finance, and project development in French-speaking Africa, Ghita Bennis enriches the team with a wealth of expertise.

Her diverse professional journey, which includes tenures at international law firms like Linklaters and Ashurst in Paris and New York, as well as her recent role as legal manager for NBA Africa and the Basketball Africa League in Dakar, adds substantial value.

Bennis enhances ADNA's capabilities in financing and projects across North and West Africa. Her specific knowledge of the mining, oil, energy, and infrastructure sectors further cements ADNA's role as a key player in French-speaking Africa, enabling the firm to continue its expansion while solidifying its prominent position in Francophone Africa.

"Her unique experience in both complex structured finance and project development on the continent will help to strengthen our already well-established practices in these areas. This integration also demonstrates the importance of our human resources as a key pillar of the firm's development. Our recruitment strategy illustrates our commitment to serving our international clients, both financial institutions and corporates, ever more effectively, while at the same time deepening our relationships with partner firms worldwide," Salimatou Diallo, Managing Partner of ADNA said while welcoming Ghita to the firm. "It was ADNA's vibrant entrepreneurial culture that attracted me, a firm made up of a mosaic of talent from every continent. As an independent firm, ADNA works with public bodies, banks and sponsors as well as international law firms. I can identify with the firm's quest for excellence and their unique positioning in the market," Bennis stated.

Ghita Bennis becomes a part of the distinguished African law firm, renowned for its exceptional reputation and dynamism in French-speaking Africa. The firm is supported by a formidable team of lawyers and legal advisors, which includes notable partners such as Foued Bourabiat, Salimatou Diallo, Sydney Domoraud, and Safia Fassi-Fihri.

Saudi Arabia

SQUIRE PATTON BOGGS TO RECEIVE LICENSE IN SAUDI ARABIA

Squire Patton Boggs is set to be granted a license to operate in Saudi Arabia by the Saudi Ministry of Justice.

The Saudi legal market is one of the largest and most lucrative in the Middle East. The country is undergoing a major economic transformation, and there is a growing demand for legal services from both domestic and international clients.

The firm's expansion into Saudi Arabia is part of its broader strategy to grow its presence in the Middle East. In recent months, Squire Patton Boggs has also opened offices in Beirut and Dubai.

Middle East Practice Co-Chairs GassanBaloul and Tom Wilson commented, "The coming decade promises to be a time of immense growth and development in Saudi Arabia and this marks another exciting milestone in our Middle East expansion strategy."

Squire Patton Boggs applied for a license to operate in Saudi Arabia in March 2023, after signing a cooperation agreement with The Law Office of Looaye M. Al-Akkas, a leading full-service Saudi law firm.

In recent months, the firm has opened an office in Beirut and hired leading Corporate/M&A partner Omar Momany and Financial Services partner NimaFath in Dubai.

According to reports, Squire Patton Boggs' new office in Riyadh will be led by partners Tom Wilson and Gassan Baloul.

Wilson is a corporate lawyer with over 30 years of experience in the Middle East, while Baloul is a project finance lawyer with over 20 years of experience in the region.

Egypt

EGYPTIAN LAW FIRM HAFEZ & PARTNERS NAMES MOHAMED ZAHER AS HEAD OF CORPORATE DIVISION

Hafez & Partners, a prominent Egyptian law firm, has announced the addition of Mohamed Zaher as Counsel and Head of Corporate, further enhancing its team with his vast knowledge of corporate law and legal advisory services.

Zaher's appointment comes after a distinguished career marked by his consistent excellence in a wide range of corporate legal matters.

At Hafez & Partners, Zaher's responsibilities will focus on delivering strategic guidance and comprehensive legal counsel across a broad spectrum of corporate and commercial matters.

His extensive background includes the management of high-profile corporate transactions, encompassing mergers, acquisitions, divisions, and capital raises.

His remarkable negotiation skills have enabled him to successfully interface with government entities, including Ministries and Regulatory Authorities, to ensure the smooth execution of his duties.

Zaher specialises in Corporate Practice, Capital Markets, and Due Diligence, providing clients with invaluable legal insights on corporate and commercial matters. He adeptly navigates the intricacies of mergers and company divisions, while ensuring the establishment of businesses in strict adherence to investment law regulations.

This involves managing essential amendments to a company's statutory documents, overseeing the documentation for incorporation, and handling matters about foreign company branches.

His expertise also includes the drafting, participation in, and formalisation of minutes for both General and Board of Directors meetings. He excels in restructuring the capital and legal frameworks for corporate clients.

With substantial experience in facilitating the establishment of representative offices and branches for multinational corporations in Egypt, he is well-versed in preparing a wide range of memoranda and research documents.

Among Zaher's noteworthy accomplishments is his successful negotiation with several pivotal entities, including the General Authority for Investment and Free Zones (GAFI), The Financial Regulatory Authority (FRA), The Industrial Development Authority (IDA), The Egyptian Ministry of Foreign Affairs, The Ministry of Trade and Industry, and The General Organization for Export and Import Control.

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