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8th ANNUAL LEGAL ERA 40 UNDER 40 RISING STAR AWARDS 2023







Receiving And Redressing A Workplace Sexual **Harassment Complaint**

Comprehensive examination of the implementing regulations of data protection laws in KSA

Harnessing the Wind: India's Journey into Offshore Wind Energy **Evergreening of loans** - A stop diktat from the regulator!





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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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Conclave



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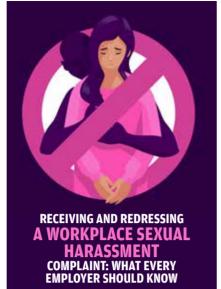
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QUICK GLANCE







Bombay High Court rules that monies received pursuant to an arbitral award was towards retirement from partnership,

Settlement of Family Dispute

hence, same TAX should not be chargeable to

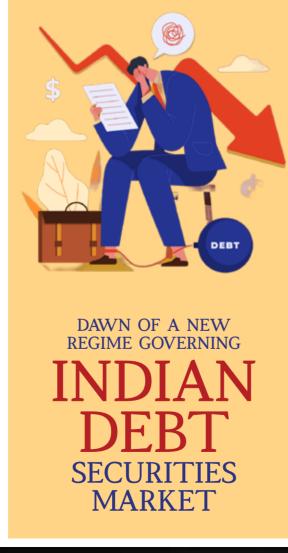


TO LISTOR NOT TO LIST

(SEBI Introduces Mandatory Listing of Subsequent NCD Issuances)











Comprehensive Examination of the Implementing Regulations of DATA

Protection Laws in KSA





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RECEIVING AND REDRESSING A WORKPLACE **SEXUAL** HARASSMENT COMPLAINT



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ARCHITA MOHAPATRA Senior Associate



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SHARDUL AMARCHAND MANGALDAS ADVISED UV ASSET RECONSTRUCTION COMPANY



Shardul Amarchand Mangaldas advised UV Asset Reconstruction Company Limited ("UV") in enforcement of security interest against Burnpur Cement Limited ("BCL") in its capacity as the secured creditor of BCL, under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI ACT) read with the Security Interest (Enforcement) Rules, 2002 (SARFAESI Rules) for the sale of immovable and movable assets forming part of cement plant of BCL at Patratu, Jharkhand, to UltraTech Cement Limited (UTCL).

This was a unique case involving strategic takeover of management of BCL by UV under SARFAESI ACT, followed by structured security enforcement actions ultimately resulting in the simultaneous sale of movable and immovable assets of the Patratu cement plant of BCL to UTCL, through a Swiss challenge process. This sale of immovable and movable assets of the Patratu cement plant of BCL to UTCL marks UTCL's entry into Jharkhand.

The core transaction team was led by Anoop Rawat, Partner; Saurav Panda, Partner; Vishrut Kansal, Senior Associate, and Ahkam Khan, Associate.

Rajat Bose, Partner and Ankita Bhasin, Counsel assisted on the indirect tax related issues in the transaction.

Shally Bhasin, Partner; Siddhant Kant, Partner; Prateek Gupta, Principal Associate and Jyotsna Punshi, Associate assisted in the litigation before the Hon'ble High Court of Delhi.

Siddhartha Datta, Partner and Deepanjan Dutta Roy, Senior Associate, assisted in the litigation before the Hon'ble National Company Law Tribunal, Kolkata

LAKSHMIKUMARAN AND SRIDHARAN ATTORNEYS ACTED FOR FLEMING LABORATORIES AND ITS PROMOTERS IN INVESTMENT BY HEALTHCARE FOCUSSED PE FUND INVASCENT

Lakshmikumaran and Sridharan Attorneys (LKS) acted for Fleming Laboratories Limited (FLL) and its promoters in a private equity transaction of INR 1,100 million by India Life Sciences Fund IV (ILSF) for a minority stake in FLL.

LKS advised FLL and its promoters with deal structuring, drafting, and negotiations of the transaction documents and assisted in closure of the deal end to end.

LKS Corporate and M&A team involved in this transaction consisted of Noorul Hassan (Partner), Dinesh BabuEedi (Associate Partner), Principal



Associates Manan Chhabra and Kumar Panda. "Hyderabad is a key region for pharmaceutical and life sciences sector, and we have been regularly advising companies in this space. We are happy to have assisted the promoters of Fleming in closing the deal. As investor interest continues to boom, we expect to witness more transactions in the region," said Noorul Hassan.

Quillon Partners advised InvAscent on this investment deal. The transaction team of Quillon

Partners was led by Namrata Sinha (Partner) and Adeeb Shah.

FLL is a homegrown active pharmaceutical ingredient (API) player, engaged in the business of manufacture and marketing of bulk drugs and intermediates. ILSF is a fund managed by InvAscent, a healthcarefocused private equity firm in India. FLL is planning to use the funds to expand its capacity by building its third manufacturing unit as well as for its foray into fermentation-based API manufacturing.

BAKER MCKENZIE ACTED FOR ASTER DM HEALTHCARE ON SALE OF ITS GCC HEALTHCARE BUSINESS



Baker McKenzie has advised Affinity Holdings Private Limited, a wholly owned subsidiary of Aster DM Healthcare Limited, on the separation and sale of its Gulf Cooperation Council (GCC) healthcare business to Alpha GCC Holdings. Aster DM, established in 1987 by Dr. Azad Moopen, is a listed company on India's National Stock Exchange, and one of the largest private healthcare service providers operating in the GCC and India. With a strong reputation and presence across the GCC and the Middle East region, it comprises 15 hospitals, 118 clinics, and 276 pharmacies across the UAE, Saudi Arabia, Qatar, Oman, Bahrain, and Jordan.

The Moopen family will continue to manage and operate the business by retaining a 35 percent shareholding in the GCC business. The remaining 65 percent will be owned by a consortium led by Fajr Capital, a sovereignowned private equity firm headquartered in the UAE.

Leading on the transaction, Abeer Jarrar, the corporate M&A Partner commented, "It has been a pleasure to support the sell-side team in getting the complex deal over the line. Our cross-border team has extensive experience advising on auction sale processes in the Middle East and this latest one is a testament to our deep sector knowledge, commercial acumen, and refined transactional techniques to help clients navigate deal complexities."

George Marshall, the corporate finance Partner added, "We are proud to have assisted the seller in navigating this complex transaction. This deal is another example of how the firm's lawyers provide seamless cross-border services and reinforces our position as a transactional powerhouse."

The Baker McKenzie cross-practice group team included lawyers from its offices across Dubai, London, Abu Dhabi, and Riyadh.

The core corporate team was led by Dubai-based corporate M&A Partner Abeer Jarrar and London-based Corporate Finance Partner George Marshall.

Cyril Amarchand Mangaldas advised the sell-side on local law in India, while AZB & Partners advised the independent directors of Aster DM Healthcare Limited.

Moelis & Company and Credit Suisse acted as the sell-side advisors.

Allen & Overy LLP and HSBC Bank Middle East Ltd. acted as buy-side advisers.

The Baker McKenzie team included:

Corporate: Grace Ong (counsel, Abu Dhabi), Tala Shomar (Senior Associate, Dubai), Neda Behador (associate, Dubai), Ololade Odunubi (associate, Dubai), Sakhar AlSudairy (associate, Riyadh)

Tax: Reggie Mezu (senior counsel, Dubai), Ben Phillips (Senior Associate, Dubai)

Antitrust: David Monnier (Partner, Riyadh), Marwan Othman (associate, Riyadh)

Banking: Adil Hussain (Partner, Dubai), Nick Tostivin (Partner, London), Thomas Hosted (Senior Associate, London)

Employment: Joanna Matthews-Taylor (Partner, Dubai), Jeremy Edwards (Partner, London), Gillian Parnell (Senior Associate, London).

IF | WITHIN THE CIRCLE **—** DEAL CORNER

VERITAS LEGAL ADVISED M2P FINTECH IN THE ACQUISITION OF GOALS101 DATA SOLUTIONS



M2P Fintech has acquired Goals101, the leader in Transaction Behavioural Intelligence (TBI) in India and other geographies.

Founded in the year 2014 and headquartered in Chennai, M2P Fintech is Asia's largest banking infrastructure company whose technology powers the digital ambitions of banks, lenders, fintechs and other financial services players. M2P Fintech is an omni-channel platform that operates in over 20 markets across the Asia Pacific, MENA, and Oceania regions.

Goals101, the 7-year-old company, renowned for its expertise in Transaction Behavioural Intelligence,

analytics, the companies aim to revolutionize the way financial transactions are understood and optimized.

This acquisition will act as a catalyst for M2P to bring in a high degree of personalization in its digital banking products to its customers. Post the acquisition, the Goals101 team will continue to work on rolling out new data capabilities, leveraging its big data platform to create more facets of personalization in financial products for customers across the world.

Goals101 has established its presence in various regions, including India, the Middle East and North Africa (MENA), and South East Asia. The company collaborates with banks and payment networks across these geographies.

The Veritas Legal team comprised of Kanisha Vora, Parshva Doshi, Prapti Parwani, Aashna Soman. The Due Diligence Team comprised of Aashna Soman, Prapti Parwani, Hriday Chokshi, Hiral Mehta, Aditi Sahay and Anamika.

has developed a Platform that runs on advanced algorithms and analytics tools that provide invaluable insights into consumer transaction patterns and orchestrates actionables. This acquisition empowers M2P Fintech to leverage Goals101's technology and integrate it seamlessly into its existing suite of financial services. By combining M2P's robust fintech infrastructure with Goals101's state-of-the-art healthcare products and services, the provision of internet-based medical and healthcare services, digital tracking services, and other innovative services. The acquisition will enhance Alibaba Health's revenue growth while allowing it to provide better services to online stores. The Freshfields Bruckhaus Deringer team advising on the transaction was led by partner Edward Freeman. He was supported by counsel Roy Chung and associate Haohan Li.

LATHAM & WATKINS ADVISED SAUDI ARABIA'S LEADING FINTECH PLATFORM TAMARA IN SECURING INVESTMENT

Global law firm Latham & Watkins advised leading Saudi fintech platform Tamara on its landmark \$340 million Series C equity funding round, propelling the company to a \$1 billion valuation and making it the Kingdom's first homegrown fintech unicorn.

Financial giants SNB Capital and Sanabil Investments, along with seasoned investors like Coatue and Endeavor Catalyst, co-led Tamara's \$340 million Series C, joined by rising stars Shoroog Partners, Pinnacle Capital, and Impulse. This follows Latham's prior guidance on Tamara's \$400 million debt financing in November, further solidifying the company's position as a regional fintech leader. The Latham team, led by Dubai partner Eyad Latif, with expert counsel from Omar Maayeh and dedicated support from associate Stephanie Dang, navigated Tamara's successful funding round.



FRESHFIELDS ADVISED ALIBABA HEALTH ON **ACQUISITION OF SOLE OPERATING RIGHT TO OFFER** VALUE-ADDED SKILLS FROM TAOBAO HOLDING

Freshfields Bruckhaus Deringer has advised Alibaba Health Information Technology Limited on the acquisition of an exclusive operating right to offer marketing materials review services and an ancillary right to provide value-added skills from Taobao Holding Limited, a direct wholly owned subsidiary of the Alibaba Group Holding Limited.

Alibaba Health is committed to providing affordable, convenient, efficient, and reliable medical and healthcare services to millions of families. Its principal activities comprise the sale of pharmaceutical and



CLYDE & CO ADVISED THE TALENT ENTERPRISE SHAREHOLDERS THROUGH STRATEGIC SALE TO **MERCER**



Global law firm Clyde & Co advises shareholders of The Talent Enterprise, a prominent Middle Eastern psychometric and talent assessment technology company, on its proposed sale to Mercer, subject to regulatory approvals.

Founded in Dubai in 2013 by David Jones, Radhika Punshi, and Gauri Gupta, The Talent Enterprise, a global talent assessment tech leader, is set for a strategic move with its proposed sale to Mercer, a Marsh McLennan company. Driven by a vision to revolutionise human capital assessment, The

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Talent Enterprise serves over 250 clients across the Middle East, Asia Pacific, and Europe, partnering with policymakers, employers, and educators on career guidance, talent management, and employee wellbeing.

Mercer, with its 25,000 employees and 130-country footprint, shares this passion for redefining work and reshaping retirement and well-being outcomes.

Clyde & Co serves as lead external counsel to The

Talent Enterprise shareholders in their proposed sale to Mercer. The team, led by Dubai-based corporate partner Darren Harris, includes senior associate Gemma Kotak and trainee Urmika Mani.

"Congratulations to the hugely impressive founder shareholders for building a market-leading psychometric and talent assessment technology company in the Middle East and best wishes to the entire The Talent Enterprise team on the next chapter," Darren Harris, stated.

BARAKAT & CLYDE REPRESENTED JAF INVESTMENT TO SUCCESSFUL DUAL ACQUISITION IN EGYPT'S FINANCIAL MARKET



Egyptian firm Barakat, Maher & Partners, in association with global law firm Clyde & Co, advised JAF Investment on its ongoing EGP 177 million acquisition of a 30 per

cent stake in both Rawaj Consumer Finance and UE Finance from Arabia Investments Holding (AIH), a listed company on the Egyptian Exchange.

JAF Investment, a family office specialising in diverse growth sectors like real estate and automotive, took a major step towards its non-banking financial ambitions by acquiring stakes in Rawaj & UE Finance. This dual acquisition signifies their strategic focus on a sector poised for further expansion, currently valued at EGP 216 billion (2022).

Partner Mostafa Elsakka, ably supported by senior associate Moataz El Sherbini and associates Walid Enany and Dalya Mahmoud, led the Barakat, Maher & Partners team in association with Clyde & Co, advising JAF Investment.

KING & SPALDING ADVISED AYDIN GROUP IN SALE OF STAKE IN TOM GROUP TO DUBAI ISLAMIC BANK

King & Spalding has provided legal guidance to the Aydın Group in the sale of a 20 percent minority stake in the TOM Group to Dubai Islamic Bank (DIB).

Aydın Group is a major employer in Türkiye with over 80,000 employees. It is one of the country's largest multi-brand retail footprints, featuring over 13,000 retail stores encompassing various sectors. The Group operates in the healthcare services sector through the Memorial Healthcare Group, overseeing 12 hospitals and two medical centers in Türkiye and Romania.



The TOM Group was previously wholly owned by the Aydın Group, a digital banking and financial technology conglomerate.

The Aydın Group received legal counsel on Turkish laws from the law firm Lexist (Lexist Ayukatlık Bürosu)

The King & Spalding Dubai team included Macky O'Sullivan (partner, corporate, finance, and

investments), Benjamin J. Williams (partner, trial and global disputes/international arbitration, and litigation), Asal Saghari (counsel, corporate, finance and investments) and Jamie Kershaw (associate).

The firm's London team comprised Derek Meilman (partner, corporate, finance, and investments), Paul Barron (partner, corporate, finance, and investments), J. John Lim (associate), and William Morris (associate).

MAZGHOUNY & CO ADVISED AMARENCO SOLARIZE EGYPT IN PARTNERSHIP AGREEMENT WITH ORIENTAL WEAVERS

Mazghouny & Co has provided legal counsel to Amarenco Solarize Egypt on its partnership agreement with Oriental Weavers to supply solar energy to one of its factories located in the Tenth of Ramadan area in Egypt.

While Amarenco is a prominent solar energy solutions provider, Oriental Weavers is a major carpets and rugs company.

The collaboration will result in the establishment of a 1.3MW solar power plant, catering to 80 percent of the factory's energy requirements.

The initiative is likely to have substantial impact by reducing carbon emissions by over 2,300 tonnes annually. This aligns with Oriental Weavers' strong commitment to sustainable practices, emphasizing the company's goal of transitioning its factories to environmentally friendly and clean energy sources.



The Mazghouny & Co team advising Amarenco Solarize Egypt comprised Khadiga Abou-Zeid, who was supported by Yehia Zakaria, as part of the ongoing advisory services to the partnership.

WHITE & CASE ADVISED DP WORLD ON FUNDING FOR JEDDAH ISLAMIC PORT UPGRADE



Global law firm White & Case LLP has advised DP World Limited and its subsidiary DP World Middle East Company Limited for the development and upgrade of the South Container Terminal at Jeddah Islamic Port in Saudi Arabia.

DP World is a global leader in supply chain solutions. It was awarded its first terminal concession outside the United Arab Emirates to operate the South Container Terminal, which serves as a crucial link in the world's busy east-west trade routes through the Red Sea and caters to a rich domestic cargo base.

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Jeddah Islamic Port is the main import destination for Saudi Arabia, handling 59 percent of its imports by sea.

A part of the development works includes dredging berth pockets and upgrading the quay walls to allow vessels of up to 18 metre draft to call at the terminal, and constructing a container yard and an engineering workshop for the ongoing maintenance of terminal equipment.

The project's financing is provided by the Saudi British Bank (now Saudi Awwal Bank) and Gulf International Bank. The White & Case team in London and the Middle East advising on the transaction was led by partners Carina Radford and Debashis Dey. The team also comprised partners Waad Alkurini, Alec Johnson, Claire Matheson-Kirton, and Sherief Rashed, and associates Shamim Khan, Ben Rodin, Nisha Raman, Maaz Shahzad, and Mikaela Nikolausson.

BAKER MCKENZIE ADVISED FIM PRIME MARINA HOLDING ON ITS ACQUISITION OF NURAN MARINA



Baker McKenzie has acted as a legal counsel to FIM Prime Marina Holding Ltd on the Sharia-compliant financing of its acquisition of the Nuran Marina serviced residences in Dubai Marina from Eshraq Investments PJSC.

FIM Prime Marina is a special purpose entity wholly owned by a fund managed by FIM Partners that was founded in 2008. FIM Partners is an independent investment management firm with offices in London, Dubai, Riyadh, and Muscat.

The firm specializes in managing investments across various asset classes, including equities, fixed income, and real estate with USD 3 billion in assets under the management.

Leading on the transaction, Adil Hussain, the Partner, and Head of the Banking And Finance Practice at Baker McKenzie, UAE, and global head of Islamic finance remarked, "We are delighted to have been chosen as the legal counsel for FIM Prime Marina Holding in this notable acquisition. It reflects our banking and finance team's commitment to delivering excellence in landmark financing deals."

Fares Bou Atme, the Director of Real Estate at FIM Partners, stated, "It was a pleasure working with the Baker McKenzie team on this exciting transaction. They ensured the financing was delivered in a timely manner. This flagship transaction, given its prime waterfront location in the heart of the Dubai Marina, is a strategic move for us, as we further expand our real estate footprint into the value-add space."

The Baker McKenzie, UAE team advising FIM Prime Marina on local legal aspects of the financing transaction was led by Adil Hussain (Partner) and included Chaya Gupta (Senior Associate).



WHITE & CASE ADVISED LSF ON REPO DEAL WITH ADIA AND AFREXIMBANK TO PROPEL SUSTAINABILITY-LINKED FUNDS IN AFRICA



Global law firm White & Case LLP has advised the Liquidity and Sustainability Facility (LSF) on a repo agreement transaction with Abu Dhabi Investment Authority (ADIA) and the African Export-Import Bank (Afreximbank) on the tri-party platform of the Bank of New York Mellon.

The move is part of LSF's global market infrastructure role, which aims to enhance the liquidity of a diversified

basket of the African sovereign Eurobonds across 18 issuers and incentivize investments like green bonds under the Sustainable Development Goals (SDG).

It has been designed with the support of the United Nations Economic Commission for Africa and Afreximbank. The LSF's objective is to contribute to addressing the gap in market participation for financing Africa's international sovereign debt. It would indirectly help in promoting a more stable re-purchase market, with a special focus on green and SDG-linked issuances.

The White & Case team advising on the transaction was led by partners Ingrid York, James Hardy, Clare Connellan, Robert Nield, Anthony Colegrave, Neha Saran, Will Smith, Jonathan Rogers (London), Steven Gee (New York), and Suzanne Perry (Washington, DC).

The team also included local partner Greg Pospodinis (Dubai) and associates Sylvia Julius, Phillan Amin, Prema Govind, Steph Lartey (London), and Michael Iloegbunam (New York).

MAZGHOUNY & CO ADVISED SCATEC IN SOLAR COLLABORATION WITH EGYPTIAN ELECTRICITY HOLDING

The boutique law firm Mazghouny & Co has played a pivotal role in advising Scatec during the early stages of its collaboration with the Egyptian Electricity Holding Company (EEHC) for the development of Egypt's largest hybrid solar and battery storage project.

Signed during the COP28 meeting held recently, the cooperation agreement focuses on a substantial 1GW solar and 200 MWh battery storage initiative.

The project aims to overcome intermittency challenges, enhance grid stability, and ensure a consistent supply of green power by releasing stored energy during peak demand.

The energy and power team led by managing partner, Donia El-Mazghouny supported Scatec with the drafting of the cooperation agreement with EEHC on the landmark project and its negotiation.



The development plan obtained the approval of the Cabinet in its meeting held on 30 November. It was a part of Egypt's efforts to increase the renewables share in its electricity mix, avoid power outages, and free up natural gas for export.

KSHAMA LOYA JOINS DENTONS LINK LEGAL AS PARTNER IN DISPUTE RESOLUTION PRACTICE



Dentons Link Legal has announced the addition of Kshama Loya as a partner in the dispute resolution practice in Mumbai.

She has advised and represented Indian and foreign clients and governments in complex disputes involving commercial and investor-state arbitration, arbitration-related litigation, contractual disputes, and commercial, civil, and criminal litigations. She has led teams and acted as a lead counsel before arbitral tribunals and courts.

Welcoming Loya, the firm's executive chairman Atul Sharma and managing partners Nusrat Hassan and Anand Srivastava wished her the very best.

A law graduate of the 2009 batch from the ILS Law College, Pune, Loya completed her LLM in 2011 in International Commercial Laws from the King's College, London. She studied negotiation at Harvard Law School and is a dual-qualified lawyer, admitted to practice in India and England & Wales.

She started her practice in 2009 in the chambers of Justice SV Gangapurwala, the Chief Justice of the Madras High Court.

Loya has previously worked with Nishith Desai Associates, Trilegal, ALMT Legal, Baker Botts LLP, London, and the late Prof Martin Hunter in London.

RAJDEEP CHOUDHURY JOINS 4-5 GRAY'S INN SQUARE AS INTERNATIONAL TENANT



Rajdeep Choudhury has joined 4-5 Gray's Inn Square in London as an international tenant.

Having specialized in commercial litigation and international commercial arbitration, Choudhury has over 20 years of experience. He has represented businesses in disputes across various industries,

including oil and gas, renewable energy, power, infrastructure, manufacturing, and commodities.

In a press statement, Paul Cohen, the head of 4-5's international group expressed, "We are delighted to welcome Choudhury to 4-5's international team. His reputation in arbitration precedes him. His extensive experience in South and East Asia strengthens our capabilities and complements our focus on global disputes in some of the world's most important markets. We look forward to his contributions."

About the development, Choudhury remarked, "For outbound India-related arbitration, boasting the likes of London Court of International Arbitration and London Maritime Arbitrators Association, London will remain a preferred seat. Another notable trend is the increasing use of London's commercial courts by Indian litigants with India constituting the 4th-largest country group. As an international tenant at 4-5 Gray's Inn Square, I look forward to offering specialist oral and written advocacy in such disputes."

Representing clients before numerous high courts and the Supreme Court of India, Choudhury is well-versed in handling ad hoc and institutional arbitration globally.

He is also on the panel of arbitrators of the Hong Kong International Arbitration Centre (HKIAC) and

the Asian International Arbitration Centre (AIAC). In 2001, he was called to the English Bar by Lincoln's Inc.

Choudhury enrolled with the Bar Council of West Bengal in 2005. Until recently, he was serving at Archeus Law as a partner.

MONA DAJANI JOINS BAKER BOTTS ENERGY PRACTICE AS PARTNER

Baker Botts L.L.P. has announced that prominent energy and infrastructure lawyer Mona Dajani has joined the firm as a Partner in New York. She will become Global Co-Chair of Energy Infrastructure and Hydrogen and Co-Chair of the firm's Energy Sector.

Dajani's global practice involves representation of some of the largest blue-chip clients worldwide. With over 20 years of practice, she has led numerous energy, sustainability, and infrastructure deals globally, including mergers and acquisitions, project development, financing, joint ventures, restructuring, tax equity, and tax credit financings involving energy and related infrastructure facilities.

The transactions led by her include solar, wind, hydrogen, hydroelectric, and geothermal, as well as ammonia, mobility, energy deals with data centers, electric vehicles, carbon capture and sequestration, renewable natural gas, biofuels, net-zero technology, and other energy transition projects.

Danny David, the Managing Partner at Baker Botts remarked, "Our firm is a market leader in the energy transition space, and Dajani is pre-eminent in this sector. Her strategic fit with our firm could not be more ideal. Her experience, including in the US, the Middle East, and Europe, spans the regions in which we operate around the globe. Her arrival will help us further expand our market-leading capabilities worldwide, and we are delighted to welcome her to the firm."

Jason Bennett, the firmwide department Chair of Baker Botts' Global Projects Practice and Co-Head of its firmwide energy sector leadership added, "Dajani is a superstar in the energy transition space, where Baker Botts is a leader. Her arrival highlights our commitment to support clients in the renewable energy space, and her leadership in energy transition will provide additional depth and excellence to support our clients in their most important investments in the future of energy."

On her joining, Dajani remarked, "For over 100 years,



Baker Botts has been the go-to law firm for the global energy industry, including the renewables and energy transition space. It's a one-stop-shop for clients across the entire energy spectrum and provides a broad, market-leading platform for my practice. I am excited to join and further strengthen and expand its global presence in the sector, particularly with so many opportunities and challenges we are seeing for clients now. It is an ideal time for me to join Baker Botts, and I look forward to expanding the team and hitting the ground running to help clients pursue the global energy transition."

Dajani has significant experience in syndicated loan and debt capital markets transactions, sustainable finance, ESG, water and transportation projects, and arranging capital for new and established energy and infrastructure companies.

She has represented a wide variety of commercial and public institutions, sponsors, utilities, financial institutions, underwriters, energy and clean technology companies, private equity funds, investment banks, and multilateral agencies in transactions throughout the Americas, Europe, Asia, and the Middle East.

Dajani was previously serving at Shearman & Sterling as a global head of renewables, global head of energy & infrastructure (projects), head of the hydrogen and ammonia practice (Americas), and co-head of the US energy team.

LATERAL MOVES LATERAL MOVES

HAMMURABI AND SOLOMON PARTNERS FOUNDER DR. MANOJ KUMAR APPOINTED AS THE ADDITIONAL SECRETARY IN THE LEGISLATIVE DEPARTMENT; DR. RAJIV MANI APPOINTED SECRETARY



Dr. Manoj Kumar, Founder and Managing Partner of Hammurabi and Solomon Partners has been appointed as the Additional Secretary in the Legislative department and Dr. Rajiv Mani has been appointed to the post of Secretary, according to an order issued by the Personnel Ministry.

Dr. Rajiv Mani is an Indian Legal Service (ILS) officer and is currently the Additional Secretary in the Department of Legal Affairs under the Ministry of Law and Justice.

The Notification from the Appointments Committee of the Cabinet read, "Appointment of Dr. Rajiv Mani,

ILS, Additional Secretary, Department of Legal Affairs, Ministry of Law & Justice to the post of Secretary, Legislative Department for a period of two years with effect from the date of assumption of charge of the post or until further orders whichever is earlier."

It further read, "Appointment of Dr. Manoj Kumar, Founder & Managing Partner, Hammurabi & Solomon Partners, New Delhi to the post of Additional Secretary, Legislative Department on contract basis for a period of twoyears with effect from the date of assumption of charge of the post or until further orders whichever is earlier, on usual terms and conditions as applicable."

In a first, the Founder and Managing Partner of a law firm, Dr. Manoj Kumar has been appointed as the Additional Secretary in the Legislative Department on a contract basis for two years. This development is noteworthy, representing the government's efforts to bring private sector expertise into various departments through lateral entry.

The legislative department primarily handles the drafting, publication, scrutiny of principal legislation, as well as the vetting of subordinate legislations, along with administration of election law and electoral reforms. She holds an LLM in Corporate & Financial Law from O.P. Jindal Global University and an MBA in International Business from All India Management Association.

VARALAKSHMI MAKYAM JOINS NOVOJURIS LEGAL AS PARTNER IN INTELLECTUAL PROPERTY RIGHTS PRACTICE



NovoJuris Legal has announced the addition of Varalakshmi Makyam as a partner to strengthen its intellectual property rights practice. Makyam specializes in copyright and trademark registration, drafting patent specifications, and filing patent applications.

Her expertise covers both Indian and global patent systems, including the United States Patent and Trademark Office (USPTO) and the European Patent Organization (EPO).

She manages patent prosecution, crafting responses to examination reports, and distinguishing inventions from prior art. Makyam also represents clients in IPR infringement cases in high Courts and district

Courts. On her joining, Ashwin Bhat, the partner at the firm expressed, "IPRs are at the core of the innovation economy, playing a pivotal role in fostering creativity, protecting innovation, and incentivizing investment in research and development. It is intricately connected to various practice areas that our firm caters to, making it a critical aspect of our client's business strategy. With Makyam taking charge of growing this practice, we will continue to encourage inventors, artists, and entrepreneurs to invest their time and resources into developing new ideas, products, and services."

He added, "Makyam's proficiency extends to the art of argumentation, enabling her to accentuate and exemplify the patentability of the subject inventions. She also brings expertise in contentious matters as she has been representing organizations before the high Courts and the district Courts in a diverse array of IPR infringement matters."

Makyam stated, "The firm's focus on technology companies provides a fertile ground for growing our IP practice. It enables us to develop expertise, offer strategic counseling, and expand our client base in a fast-paced and innovation-driven sector. This specialization not only benefits the firm but also contributes to the success and protection of the technology companies we serve"

She further stated, "It also allows us to stay at the forefront of emerging technologies and market trends. I am to better assist our firm's clients in identifying patentable inventions, advising on IP strategies, and securing patents that protect their innovations."

In 2016, Makyam's journey began as a Registered Patent Agent. A year later, she enrolled at the Telangana Bar.

She holds a master's degree in computer science in addition to her legal qualifications. This makes her a unique and multi-disciplinary professional in the IPR field.

SHWETA BHARTI TAKES OVER AS MANAGING PARTNER AT HAMMURABI & SOLOMON PARTNERS



Shweta Bharti, Senior Partner at Hammurabi & Solomon Partners has taken charge as the Managing Partner at Hammurabi & Solomon Partners after Dr. Manoj Kumar, Founder and Managing Partner of Hammurabi and Solomon Partners has been appointed as the Additional Secretary in the Legislative department.

Shweta Bharti is a Senior Partner at Hammurabi & Solomon Partners, a leading law firm in India with over 22 years of legal experience. She heads the firm's arbitration, insolvency, corporate, and compliance practice areas, where she advises and represents

clients across various sectors and jurisdictions. She is also a Jurisdictional Council Member of the Inter-Pacific Bar Association (IPBA), a prestigious network of legal professionals in the Asia-Pacific region.

Shweta is widely recognised as one of India's top lawyers by several reputed publications and awards. She has successfully handled complex and high-stake cases in domestic and international forums, including ICC, SIAC, and LCIA. She has also secured some landmark judgments in the Indian courts, especially in the insolvency and bankruptcy domain. She is passionate about sharing her knowledge and insights through speaking engagements, articles, and publications, both nationally and internationally. She is also an author and contributor to several books and reports on compliance, ethics, and women in business and law.

Shweta is empaneled with UIDAI (AADHAR) as their Panel Counsel, Central Government Standing Counsel, as well as Counsel for various other Public Sector Undertakings, Multinational Companies, Private Companies etc. representing them before various Courts and Forums.

She is acting as the Independent Director in Companies and also as the External POSH member for various Companies.

LATERAL MOVES LATERAL MOVES

AL TAMIMI & COMPANY APPOINTS EIGHT NEW PARTNERS



Al Tamimi & Company has announced a record eight new Partners, taking its total number of Partners to 97. across its 17 offices in 10 countries.

The promotions will take effect from 1 January 2024 and are within the firm's Corporate Commercial, Corporate Structuring, Litigation, Transport & Insurance, Dispute Resolution, and Intellectual Property departments. These promotions underline the firm's expertise and strength in depth and come as recognition of the new Partners' invaluable contributions to the firm.

Samer Qudah, Former Managing Partner at Al Tamimi & Company, commented:

"As a firm, we are committed to ensuring that our most talented lawyers receive the recognition they deserve. Becoming a Partner is a significant career milestone that requires dedication and excellence. Our new Partners have demonstrated these qualities and more, earning the respect and trust of their clients, colleagues, and peers. They have also shown their commitment to the firm's vision, values, and culture, and to advancing our position as the leading law firm in the Middle East and North Africa."

The newly appointed partners are:

Ahmed Hashem - Transport & Insurance (Saudi Arabia) - Ahmed Hashem is Senior Counsel at the Transport department is located in Jeddah office and heading the practice in Kingdom of Saudi Arabia. Prior joining Jeddah office Ahmed was a Senior Associate in Kuwait office for almost three years.

Ahmed Mahomed - Corporate Structuring (Riyadh) - Ahmed is a highly regarded corporate lawyer, with extensive experience in corporate commercial matters in the Kingdom of Saudi Arabia (KSA). His practice

covers a number of sectors, including corporate structuring, foreign direct investment, mergers and acquisitions, and joint ventures.

Hamzah Abu Hassan - Corporate Commercial (Jordan)

- Hamzah Abu Hassan has over 10 years' experience advising on private and public mergers & acquisitions, equity capital markets in addition to providing general structuring and corporate consultancies. He has advised clients on transactions across the GCC including the UAE, Oman, Qatar, Kuwait and Bahrain. He has particular expertise in public and private M&A and transactional work.

Mariam Sabet - Intellectual Property (Dubai) - Mariam is a member of the Intellectual Property team in the Dubai office and works on a broad range of both contentious and non-contentious IP matters. She advises both local and international clients on the protection of their IP and has assisted in building and developing their brands and copyright portfolio, through managing their IP portfolio and advising them throughout the appropriate usages and enforcement of their rights

Mohamed El Dessouky – Dispute Resolution (Dubai) As a member at the litigation department of Al Tamimi & Company, Mohamed handles all aspects of litigation cases which vary from the initial instructions from our clients, case strategizing, collecting evidence, drafting and filing statement of claims and defense memorandum up to the follow-ups on the attendance before the UAE courts to oversee the conduct of the case so as to ensure the efficient handling of all cases.

Mohamed Negm - Dispute Resolution (Riyadh) Mohammed has extensive experience in bankruptcy cases, banking litigation, and securities disputes. Mohammed is also well-versed in a variety of legal areas, including regulatory reform, and legislative drafting. He has a proven track record in advising clients on a wide range of corporate and dispute resolution matters, including company liquidations and the enforcement of judgments and arbitration awards.

Omar Al Humaid - Corporate Structuring (Riyadh)
Omar is a Saudi qualified lawyer, prior to joining Al
Tamimi and Company Omar has completed his training
with a leading international law firm. He was part of
the Corporate team involved in advising national and
multinational companies and foreign investors.

Yasser Madkour - Transport & Insurance (Dubai) Yasser is a qualified attorney and has a particular interest in commercial litigation, who specializes in handling disputes and claims relating to all types of bills of lading and charter-parties, as well as the custom and insurance policy disputes. He has been involved in numerous incidents in a broad range of shipping sectors including the pollution, collisions, grounding, salvage, and general average cases.

Widely recognized for its ability to merge international expertise and legal service with native regional knowledge and insight, the recent appointments of new Partners are a testament to the exceptional capabilities and proficiency of Al Tamimi & Company's departments and jurisdictions.

KING & SPALDING EXPANDS MIDDLE EAST M&A AND ENERGY PRACTICES WITH ADDITION OF PARTNERS

King & Spalding has strengthened its expertise in Middle East M&A and the energy sector by welcoming partners Simon Fraser and Matt Hartsuyker to its Corporate, Finance, and Investments (CFI) practice group in Abu Dhabi.

They are seasoned M&A lawyers and specialize in handling complex regional and global transactions, encompassing acquisitions, divestitures, strategic investments, joint ventures, and corporate restructuring across various industries, particularly in resources, energy, and infrastructure.

Todd Holleman, head of the CFI practice group said, "Simon and Matt bring an excellent reputation and track record in the Middle East market along with impressive cross-border M&A capabilities that complement many of our practices very well – including our energy practice, an area where they have significant experience. In Simon and Matt, we are adding two partners who have extensive experience navigating and closing the kinds of complex, high-value transactions that advance our clients' business strategies. They will help propel the continued growth of our corporate practice in the region."

Fraser has more than 25 years' experience advising clients on transactions around the globe from London, New York, Australia, Asia and the Middle East. He was most recently a partner at Ashurst, where he led the Corporate and Oil & Gas teams in the Middle East. He is listed in Legal 500's "Hall of Fame" for Oil, Gas and Natural Resources UAE and ranked in Chambers Global for Corporate/M&A (Abu Dhabi), Corporate/M&A (Kuwait) and Projects & Energy (Kuwait).

Hartsuyker, also previously at Ashurst, has over 10 years' experience advising on major international transactions in the Middle East, Asia and Asia Pacific. His practice spans various sectors, with a particular focus on energy, resources and infrastructure.



Nabil Issa, Middle East Managing Partner of King & Spalding added, "Simon and Matt are outstanding additions to the team, providing added depth to our transactional capabilities in the Middle East. We are in growth mode across the region – in Abu Dhabi, Dubai and our new Riyadh office – so are proud we have recently recruited additional senior lawyers who are attracted to our culture of excellence and collegiality and who further complement our existing team and help drive forward our commitment to our clients and this region."

"While King & Spalding has a long and successful history in the Middle East, stretching back decades, I have been impressed by the ambition and enthusiasm of the firm to evolve with and continue to invest in the market," Fraser added. "The firm's energy, uncompromising focus on client service and forward-facing approach, alongside the exciting regional developments such as the recent COP 28 summit in Dubai and Saudi Arabia's Vision 2030, make King & Spalding incredibly attractive for Matt and me. It is great to be part of the growth story."



8TH ANNUAL LEGAL ERA 40 UNDER 40 RISING STAR AWARDS 2023



Legal Era - Legal Media Group hosted the 8th Annual 40 Under 40 Rising Star Awards 2023 on 7 December, 2023 in the impressive heritage-rich environs of The Taj, Mumbai.

The prestigious Legal Era Awards are a testament to their hard work, dedication and endurance to the legal profession.

The Chief Guest for the 8th Annual 40 Under 40 Rising Star Awards Hon'ble **Justice B. N. Srikrishna** who graced us with his presence as Legal Erahonoured young, up-and-coming talent under the age of 40 years that exemplify vision, leadership, innovation, and accomplishment in the legal fraternity.



He was joined by our distinguished guests **Sanjukta Kulkarni**, Executive Vice-President and General Counsel, LTIMindtree Ltd. and **Maneck M Mulla**, Founder and Managing Partner, M. Mulla Associates.

The awardees included a spectrum of Litigators, Directors, and more including Partners, Associate Partners, Head of Compliance and Investigation, Head of Legal, Managing Partners, and Director-Legal to Manager Legal, Managing Associates, General Managers, Advocates, Chief Compliance and Legal Officers, Corporate Legal Counsels, DGMs, Deputy General Counsel and General Manager Legal. Nine years back, Legal Era - Legal Media Group became the first Think Tank and Global Platform to institute the 40 Under 40 Rising Star Awards as a celebration of young achievers for their outstanding contribution to law, their courage to carve new career journeys, and their burning desire to take on challenges head-on!

Here is the list of the winners at the 8th Annual 40 Under 40 Rising Star Awards.











ABHIJIT YADAV

Legal Director, Colgate-Palmolive (I) Limited

Abhijit Yadav is an in-house legal counsel with 16+ years of experience in the FMCG and Pharma industry. Currently he is associated with Colgate-Palmolive (I) Limited in the capacity of 'Legal Director'.

Abhijit is a second generation lawyer from Ratnagiri in Maharashtra and has completed his law degree from Govt. Law College, Mumbai. He has also completed P.G. Diploma in IPR & Masters in Business Laws (Distance) from National Law School Bangalore and 'Credentials of Readiness' from Harvard Business School Online.

He has worked in the Food, Cosmetics & Pharma industry with companies such as Marico, L'Oreal & Sanofi.



Litigation Associate, ANAND & ANAND

Achyut Tewari is a litigation associate at Anand and Anand and has broad experience in dealing with a variety of Intellectual property litigations and strategy along with elements of anti-trust litigation. He is engaged in some of the most complex and high stake IP litigation matters providing litigative support to clientele from across the world upon patent portfolios for agricultural and pharmaceutical products, telecom, etc.; trademark portfolios of a vast array of clients in consumer spaces of logistics and supply chains, liquor, banking, real-state, hospitality, consumer electronics, etc.

He has also been instrumental in litigation and advisory strategy for leading designers and luxury products portfolios for the fashion industry, as well as advising copyright portfolios for filmmakers.





ABHISHEK DADOO

Partner, Khaitan & Co

Abhishek Dadoo is a Partner in the Public M&A practice group in the Mumbai office. He routinely advises financial and strategic investors on listed company transactions and has been involved in friendly as well as hostile acquisitions in the listed space.

Abhishek actively contributes on topics relating to Public M&A, Takeover and Insider Trading Regulations, including engagement with regulators.

ADITI SINGHVI

Partner, Cyril Amarchand Mangaldas

Aditi is based out at of Mumbai office of CAM. She was elevated to partnership in 2020. Aditi has developed good relationships with various private equity funds such as Blackstone, Warburg Pincus and various cooperation (both domestic and multinational) such as Reliance Limited, Tata Group, Prudential Financial, Inc.

Aditi helped Bank of Baroda on its USD 1.37 Billion acquisition of Vijaya Bank and Dena Bank (closed in April 2019). This was a complex three-way merger under a specialized statute governing nationalized banks. It involved a scheme that was laid before the Indian Parliament for approval and it is the first ever such merger of three nationalized banks in India. The scheme drafted by Aditi was tabled before the Indian Parliament and for this reason was scrutinized by the highest levels of the Indian government. That scheme became the model on which the Indian government merged ten more nationalized banks and all of which were advised by Aditi. IBLJ Deals of the year – 2019.









ALYA KHAN
Partner. Vashi and Vashi

Alya commenced her career in law in 2011 as an articled clerk with Vivek Vashi and graduated in 2012. Alya qualifies as a Solicitor in 2014 with the Bombay Incorporated Law Society. To Alya, applying the knowledge of law to the client's specific requirements, coupled with conscientiousness, integrity and producing qualitative work, prevails and sets the benchmark for a successful lawyer.

Alya's practice primarily focuses on Dispute Resolution including litigation across all fora including the Bombay High Court, Supreme Court, tribunals, domestic and international arbitrations, seated in and outside India, including SIAC arbitrations. As a dispute resolution lawyer with experience across various practice areas and jurisdictions. Alya has appeared and regularly appears at every level of the Indian Judicial System including the Supreme Court, Bombay High Court, Calcutta High Court and various Tribunals. Alya also has experience litigating matters arising under the Insolvency and Bankruptcy Code, 2016.



Partner, Jurisperitus

Having enrolled at the Bar a little over 15 years ago, Ashish is a Senior Partner with Jurisperitus Law Offices and practices in the fields of Corporate Commercial and Strategic Advisory & Dispute Resolution. He has educated and worked both in India and USA and is the face of the Firm for many of the Firm's domestic and international clientele including being Head of the Firm's Japan Desk.

Ashish represents and advises clients in practice areas relating to Commercial Contracts and Government Tenders, Consumer Disputes, Environment, Real Estate among others. His participation is also actively solicited by clients in strategy discussions and negotiations.

His clientele includes domestic and international companies and his practice covers a wide range of sectors including Real Estate & Infrastructure, Banks & Financial Institutions, Railways, State Governments and Government institutions, Authorities, etc. He regularly advises on various commercial documentation apart from representing clients before various judicial and quasi-judicial fora.



ANUP VIJAY KULKARNI

Partner, J Sagar Associates

Anup is a Fellow member of the Institute of Company Secretaries of India (ICSI) and is also enrolled with the Bar Counsel of India. He is a certified Corporate Social Responsibility (CSR) professional, and a certified POSH professional as recognized by the ICSI. He is a Partner with JSA and is one of the heads of Corporate Compliance & Secretarial practice at JSA. His practice focuses primarily on corporate compliance, corporate governance & secretarial matters with particular emphasis on corporate laws and Foreign Exchange Regulations. He actively assists in setting up subsidiaries of foreign companies /Special Purpose Vehicles, as well as Branch and Liaison offices in India.

He regularly appears before the National Company Law Tribunal, Reserve Bank of India, Ministry of Corporate Affairs on various compounding and adjudication matters involving private & public companies. He also appears before the Department for Promotion of Industry and Internal Trade, Foreign Investment Facilitation Portal, Department of Telecom, Bureau of Indian Standards, Petroleum and Explosives Safety Organization, SEZ & STPI in relation to various compliance, registrations, and licensing matters.

BHUSHAN PANSE

Partner, DSK Legal

Bhushan joined DSK Legal in August 2007. Bhushan specializes and has extensive experience in Real Estate Practice and Dispute Resolution – Litigation. He has expertise in undertaking legal due diligence and providing a comprehensive legal analysis of risk factors that may be involved in such transactions; advising on acquisition and aggregation of agricultural and non-agricultural properties in the State of Maharashtra and structuring the deals and documenting the same; advising clients in respect of queries raised under the provisions of the Maharashtra Regional and Town Planning Act, 1966, Maharashtra Land Revenue Code, 1966, Maharashtra Tenancy and Agricultural Lands Act, 1948 etc. and various other statues dealing with the properties in Maharashtra. He regularly appears for various matters before the High Court, Bombay, Civil Courts, Small Causes Courts.









BITIKA KAUR

Head - Litigation & Regulatory Practice

Apraava Energy Private Limited

Bitika completed her law at the prestigious Department of Law, Calcutta University in 2013 and began her litigation career in Calcutta High Court. She then moved to Mumbai and worked with multiple law firms, before finally joining Apraava Energy Private Limited in 2021 where she currently heads the Litigation and Regulatory Practice. Bitika specializes in civil and commercial litigation, general corporate advisory, ad hoc arbitrations and regulatory litigation. She also reviews the regulatory and policy developments in the power and legal sector, which may have an impact on Apraava, and provides valuable feedback and the way forward in this regard.



Senior Corporate Counsel, Amazon

As Senior Corporate Counsel at Amazon Seller Services, Harshit oversees legal functions and negotiated pivotal agreements but also contributed significantly to the strategic success of the organization. He has also worked with various reputed organizations earlier at leadership roles.



DEBOLINA BAHL

Senior Director, LTI Mindtree

Debolina Bahl is Senior Director, Employment Law & Commercial Dispute Governance at LTIMindtree Limited (LTIM) responsible for legal portfolio of one of the fastest growing IT companies. As part of her role, he leads contracts for designated geographies, global employment advice and employment litigation (excluding US). She also extends her support to compliance and data privacy function.

She has diverse experience handling legal matters across companies such as Tech Mahindra &Capgemini India. Over the course of her career, Debolina has advised on several large value deals, employment law, litigations, advisory on M&A integration and general policy matters including on rebadging employees.



Senior Associate, ANAND & ANAND

Imon Roy is a Senior Associate in the Litigation (IT and e-Commerce Practice) in the Noida office. Imon has been twice rated as Rising IP Star, India, Asia-Pacific Region, by Managing Intellectual Propertyin 2020 & 2019. Imon also has experience with Khaitan& Co. (Noida) as an Associate.

In her area of practice, Imon has represented and advised various clients such as Microsoft Corporationin combating Tech-Support Fraudscam on impersonation of client & service, with the CBI under Operation Chakra II and Special Cell, Cyber Unit, Delhi Police; andbefore the Delhi High Court for trademark and copyright infringement as also world's leading 3D Design, 3D CAD & Engineering Software Companies before Delhi High Court for copyright infringement by software piracy; Before the Adjudicating Authority under IT Act, 2000 for complaint under S. 66A and S. 43 of the Act amongst others.









JAYESH KOTHARI

Partner, DSK Legal

Jayesh works extensively in practice areas of M & A, Joint Ventures, Private/Venture Capital, Corporate & Commercial Advisory. He is a transactional lawyer and advises clients on their investment and strategic decisions in the areas of corporate laws, commercial laws and other related laws. He is well experienced as a corporate lawyer and has significant transactional experience on a variety of transactions in diversified sectors. At DSK Legal, Jayesh is also a member of the firm's international outreach programme which aimed to focus on foreign investments in India and outbound investments from India. Prior to joining DSK Legal he was associated with the Corporate team at Amarchand Mangaldas & Suresh Shroff (now Cyril Amarchand Mangaldas).



Partner, DSK Legal

Mitali joined DSK Legal in May 2011. Mitali is a Solicitor by qualification and specializes in matters relating to Real Estate. Her Specific expertise includes advising leading builders and developers on acquisition and aggregation of agricultural and non-agricultural properties in the State of Maharashtra, structuring the deals and documenting the same; undertaking legal due diligence and providing a comprehensive legal analysis of risk factors that may be involved in the transactions. Issuance of title certificates verifying the title of the owners/ developers in respect of properties; sdvising clients in respect of various queries raised under the provisions of the Maharashtra Land Revenue Code, 1966, Maharashtra Tenancy and Agricultural Lands Act, 1948, Urban Land (Ceiling and Regulation) Act, 1975, Real Estate (Regulation and Development) Act, 2016, Development Control and Promotional Regulations, 2034, etc. and various other statues.



MEGHA BABAR Legal Counsel, Syngenta

Megha has experience in handling a plethora of legal cases of various areas of law including strategic handling of cases with a significant experience in a contractual and commercial exploitation of Intellectual Property and Commercial Agreements. She is a legal brand strategist for some of the big conglomerates in the field of adoption, protection and increasing visibility of brands.

Megha has rendered specialized services to fortune 500 companies with regards to opinion relating to licensing and franchising, with a large conversion rate for successfully concluding matters relating to takeovers, acquisitions, mergers, slump sales and joint ventures.



Senior Associate, ANAND & ANAND

Pallavi is a lawyer and Registered Patent Agent with over 5 years of diverse experience in Intellectual Property (IP) litigation, IP prosecution, advisory and compliance. She joined the firm in 2020 after working in patent prosecution at another top-tier IP firm. Pallavi's technical and legal background helps her in handling a wide variety of tasks, such as, analysing and drafting patent specifications, patent prosecution before the Indian Patent Office, conducting prior art searches, FTO analysis and due diligence, understanding complex patents, preparing technical reports and affidavits, licensing and IP strategy. She is a part of a team representing various multi-national companies in highly contentious matters before the High Court of Delhi, including matters related to Standard Essential Patents (SEP).









PANKAJ SEVTA

Senior Legal Manager, American Tower Corporation India

Pankaj has led more than 25 merger and acquisitions as non-litigation legal head/ Senior legal manager and led a team of 25 people with a span of last approx 18 months. He is in charge of not only Ofbusiness (being Unicorn) but also handling entire legal operations at Oxyzo (NBFC-SI, Unicorn).



Partner, Khaitan & Co.

Priya Singh is a Partner in the Dispute Resolution practice group in the NCR office of Khaitan & Co. She specialises in advising clients on infrastructure and energy arbitrations and extensively advises clients on strategizing, drafting, and regularly represents them before Institutional (HKIAC, SIAC, and LCIA) and ad hoc arbitrations seated in India and abroad.

Priya has been practicing for over a decade now and regularly appears before all forums including the Supreme Court of India, High Courts across the Country, National Company Law Tribunals, and District Courts in Delhi, Mumbai, Calcutta, Chennai, Hyderabad, Nagpur, and Gujarat.

She has also worked as a Judicial Clerk in the High Court of Delhi, giving her substantial exposure to experience the practice and procedures of the Court from both sides, from the bar as well as the bench.



PERSIS HODIWALLA

Managing Partner, JP Legal Corp.

Persis always prioritizes her client's deliverables and made sure that the agreements are aligned as per the requirements irrespective of the timings. Last year i.e. from 2022 to 2023 till date, Persis has been a part of numerous Legal Speaking Panels organised by various Legal Fraternities across India and Dubai. She keeps herself updated with all the latest laws, judgements, case-laws, commercials deals etc. prevailing in the media and entertainment sector. This also enables her to be a prominent speaker at these panels and make sure that the audience is enlightened listening to her speech. She also time and again participates in Seminars organised by various educational institutions on intellectual property and dealing with commercial transactions in the media and entertainment sector. On 18th February 2023, Persis was invited to be a Speaker at Global Intellectual Property Convention, Goa and spoke on the Topic of Intellectual Property in Content Curation. On the dais, she was accompanied by other litigating lawyers who were from Trademark and Patent Industry.



Associate Partner, Intll Advocare

Rohan is an alumnus of the prestigious Faculty of Law, University of Delhi. His expertise lies in handling complex & multi-jurisdictional issues pertaining to commercial/ contractual disputes, Information Technology, Intellectual Property Rights & Real Estate. Apart from litigation, Rohan also provides advisory both foreign and domestic clients on several aspects of corporate and regulatory compliance. Apart from Civil law, Rohan also has experience in criminal law and regularly advises clients on various aspect thereof. He regularly represents clients before the Hon'ble Supreme Court of India, High Court of Delhi, Punjab & Haryana High Court, Bombay High Court, and other Courts/Tribunals across India and has handled critical and significant cases relating to commercial contracts, Intermediary liability, Infringement & Passing Off actions, Insolvency, and Employment/Labour disputes amongst others.







ROZMIN LAKHANI

Senior Counsel, Mastercard

Rozmin is a seasoned lawyer and a proven people leader with 15 years of experience with cross domain expertise in dispute resolution, financial services, technology, and payments spread across law firms and in house roles.

Rozmin is a Senior Counsel (Director – Legal) with Mastercard, a global technology company in the payment industry. In her current role at Mastercard, she is responsible and a trusted legal advisor for all product management and commercialization efforts in the Asia Pacific region in relation to Commercial & SME Business within Mastercard.

She joined Mastercard in 2019 as a Counsel to provide legal support on emerging technology issues and to handle global and regional technology contracts and mergers and acquisition and integration of acquired businesses. Later, she played an expanded role to build, mentor and lead the legal team, to provide legal support on customer contracts for several business units within Mastercard. This expanded opportunity allowed Rozmin to leverage her legal expertise and accelerated her experience and exposure within Mastercard.



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Partner, IC Universal Legal

Sameena has been a part of the Chennai office of the Firm since its inception and co-heads the office. She has been a lead member of the Corporate and Transactional Team assisting and advising domestic and foreign clients through the life span of transactions and has led on some of the highest valued transactions in healthcare, energy and information technology sectors.

Over the last decade, Sameena has worked on several Private Equity and M&A transactions, both in India and overseas and has also facilitated raising of debt funding from banking and financial institutions for corporates in the healthcare and life sciences space, and has represented some of the most renowned names in the business which include Eastern Spices, Aster Hospitals, Strides Pharma, Solara, Omnivore Partners, Celesta Capital, Info Edge, Dare Ventures, Coromandel International Limited and, Premji Invest, GeneSys Biologics, Biocon as well as worked with financial institutions such as HDFC and Reliance.

SATABDEE MOHANTY

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Satabdee works on Transactional, Advisory, Intellectual Property, Compliance, Disputes& Litigations. She is Lead Counsel for analytical instruments division and all its sub-divisions for APAC including tender business, manufacturing along with leading legal for marketing, sales, SCM, operations, HR, administrative functions, finance, IT, regulatory and working closely with government relations. She works onsetting up compliance framework across functions for India Business and supporting EMEA and ANZ business for strategic and legal advisory, transactional and contentious matters.



SAURABH GUPTA

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Saurabh Gupta is a Partner at Solomon & Co., spearheading the real estate practice with an impressive track record in both conventional as well as contemporary real estate transactions. Saurabh has an in-depth knowledge of the industry, coupled with more than a decade of experience in interacting with several established real estate groups across India. He holds a bachelor's degree in law and a post-graduation degree in Business Laws from National Law School of India University, Bangalore. He has comprehensive transactional experience in real estate ranging from development of integrated townships, built-up infrastructure and energy projects, logistics, warehousing, residential and commercial development and redevelopment including slum rehabilitation schemes, joint ventures, real-estate funds, industry set-ups in India, land acquisition transactions, land title due diligence of all types of immovable properties and wide array of real estate transactions across India. He has advised and represented several fortune 500 companies, power generation companies, domestic and foreign banks, high net worth individuals, societies/associations and top realty firms. He is both well-versed and experienced with local property laws and regulations operational in various states of India, and also with the laws relating to investment in India from a Foreign Direct Investment (FDI) perspective. His practice areas include real estate laws, construction and development, corporate commercial transactions, dispute resolution and inheritance & succession laws.









SAURABH KUMAR

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Saurabh's major focus is in Mining, oil and gas criminal, transactions and corporate, capital markets and tax law. He has handled both upstream & midstream oil & gas, projects with a focus on transactional and corporate work involving high-end sophisticated transactions for some of the leading companies present in India and East Africa.

He has been involved in drafting, reviewing and negotiating operatorship agreements, implementation agreements, conducted PSA negotiations, gas sales agreements, negotiations with government for mining and oil and gas contracts.

Saurabh has appeared before various international tribunals for arbitration on matters related to contractual disputes in the energy and mining sector, the most recent one related to the price calculation of gas. He has been advising various companies establishing their business in India and also advised leading global developers and marketer of various branded product on their various crucial and strategic decision-making processes. He has dealt with a broad range of matters related to cheating, forgery, criminal breach of trust, misappropriation, cybercrimes, corporate fraud, negligence, counterfeit currency, offences involving weights and measures, Motor Vehicles Act, Negotiable Instruments Act, Legal Metrology Act, Rules and Enforcement Directorate cases, Central Bureau of Investigation cases, arbitration matters.



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Assistant General Counsel - Legal & Compliance Pernod Ricard

Smreeti advises business functions on strategic transactions and new business initiatives. She is also the legal business partner for the Operations & HR function and leads the advisory on the S&R initiatives of the organization.

As part of corporate practice, Smreeti has a rich legal professional experience of over 15 years working across diverse sectors including Energy & Infrastructure, hospitality, manufacturing, alco-bev etc.

She spent her first four years in private practice with some of the largest law firms in India, followed by in-house legal positions. During her professional journey, Smreeti has specialized in broad spectrum of legal, compliance, regulatory practice including strategic & business advisory, structuring complex commercial transactions incl. deal structuring, cross border M&A, financing (including asset & project financing), setting up greenfield projects, risk assessment & setting up robust compliance programs. Having worked in diverse sectors, she has garnered significant experience on regulatory issues & general corporate advisory.

STUTI TANDON

Senior Legal Counsel, Apraava Energy Private Limited

Stuti is primarily involved in developing strategies and structures for acquisitions and restructuring of the business, negotiating and managing the acquisition related documentation, managing due diligence process and liaising with internal stakeholders and counterparty to achieve timebound and cost efficient completion.

She is actively involved in post-merger nuances and regulatory compliances as well as involved in the financing portfolio of the company focusing on the different debt and equity models being followed by the company. She also provides advisory on transaction structuring, risks and creation and enforcement of security andnegotiates with financial organizations so as to ensure that the company's interests are protected and the internal policies as and standards are complied with and in line with the regulatory framework.



SUBHOJIT SADHU

Partner, Cyril Amarchand Mangaldas

Subhojit is based out at of CAM's Mumbai office. He has worked on over 500 transaction in the debt financing space in for a career spanning 15 years.

He has worked and led the deal on Renew RTC – Financing of the first round-the clock renewable power generation being developed by a special purpose vehicle set up by Renew Power Limited. The deal involved an external commercial borrowing of USD 1 billion. The deal won the APLMA Renewable Energy Deal of the Year in 2023 and Asia Pacific Deal of the Year 2023 and the Renewable Deal of the Year in the Asset Triple A Sustainable Infrastructure Awards 2023.







VIJAY PUROHIT

Partner, P&A Law Offices

Vijay has over 14 years of experience in dispute resolution. His practice focuses on International and Domestic Arbitration, Corporate/Commercial disputes, Labour and Employment and Insolvency laws.

Vijay is a Fellow of the Chartered Institute of Arbitrators (CIArb), London and has appeared in arbitration cases in India and abroad in both, ad-hoc and institutional arbitrations in various sectors including E-commerce, Oil and Gas, Energy, Healthcare, and Energy Management and Automation. Vijay is also a member of the London Court of International Arbitration (LCIA) and the International Bar Association (IBA).

As a litigator, Vijay has represented clients before the Bombay High Court as well as other High Courts in the country, National Company Law Tribunal (NCLT) (Mumbai and other benches) and NCLAT, Lower Courts and Tribunals, and Quasi-Judicial Authorities.



Partner, Cyril Amarchand Mangaldas

Vivaik has more than 12 years of experience of representing reputed fund houses on structuring and setting up investment vehicles including venture capital funds, private equity funds, hedge funds, real estate funds, infrastructure funds, PIPE funds, fund of funds, pre-IPO funds, etc.

He has advised fund managers in structuring, formation and operation of bespoke investment structures and with certain investor disputes.

He has advised UK India Development Cooperation Fund (UKIDCF), the investment platform of Foreign, Commonwealth and Development Office (UK Government) & FCDO for their investments in various investee funds (ongoing) and many more.





VINAYA NATARAJAN

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Vinaya is a Senior Director, Legal at LTIMindtree, leading commercial transactions for LTIMindtree's largest verticals. She is an experienced and recognized transactions attorney who has negotiated multi-million-dollar, multi-jurisdictional deals for companies across the world, including previous stints at Wipro, the Hinduja group and the Tata Group. She is a data privacy expert with both operational and advisory experience in all major privacy legislations including GDPR, CCPA, HIPAA, PIPL and DPDP. In her fifteen years of work as an in-house counsel, she has handled a diverse portfolio that includes mergers and acquisitions, regulatory compliance, employment and investigations, and ethics and governance. She has a deep interest in diversity and inclusion initiatives and is a strong advocate of increasing women's representation in, and access to, the workplace.





A WORKPLACE SEXUAL HARASSMENT COMPLAINT: WHAT EVERY EMPLOYER SHOULD KNOW

Gender equality includes protection from sexual harassment and right to work with dignity, which is a universally recognised basic human right.

- Vishaka and Others vs. State of Rajasthan and Others (13.08.1997)

round the world, organizations are taking measures to promote gender equality and provide a safe and secure workplace for everyone, which is free from any form of harassment. In India, protection against sexual harassment is vested in all persons as a part of their right to life with dignity under Article 21 of the Constitution.¹

Fostering a safe and respectful workplace is not only a moral imperative but also a legal requirement for employers in India. Workplace sexual harassment is a serious concern that employers must address adequately and efficiently to ensure a safe workplace. The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (Act) and the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013 (Rules) were enacted with the intention of providing protection against sexual harassment of women at workplace and for the prevention and redressal of

complaints of sexual harassment. In the decade following its enactment in 2013, the Act has undergone revisions through legislative amendments, and the interpretation of certain provisions of the Act has evolved with time through clarifications and directions of the courts in India.

A report published by Complykaro and Economic Times showed that there was a 31% increase in sexual harassment complaints at the workplace in the financial year ending March 2023 as compared to the financial year ending March 2022. A recent analysis of companies in the BSE100 ESG Index conducted by Forbes India and Complykaro indicated that there was a steep increase of 101% in the number of pending sexual harassment cases at workplaces in the financial year ending March 2023. This could be attributed to several reasons including return of workforce to workplaces post COVID-19 pandemic and increased awareness and sensitisation among employees.

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¹ Union of India and Ors. v. Mudrika Singh 2021 SCC OnLine SC 1173

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| TRILEGAL

Given the above context, it is crucial for employers in India to be aware of the nitty-gritties of the law and understand the process of handling and addressing workplace sexual harassment complaints effectively, sensitively and in a time bound manner. This article outlines key considerations that every employer should be aware of when it comes to receiving and redressing sexual harassment complaints.

What is 'sexual harassment'?

The Act prohibits sexual harassment of women at any workplace. 'Sexual harassment' has been defined under the Act to include any one or more of the following unwelcome acts or behaviour (whether directly or by implication):

- i. physical contact and advances;
- ii. a demand or request for sexual favours;
- iii. making sexually coloured remarks;
- iv. showing pornography;
- any other unwelcome physical, verbal, or non-verbal conduct of sexual nature.

Further, any circumstances of implied or explicit promise of preferential treatment in employment, implied or explicit threat of detrimental treatment in employment, or implied or explicit threat about a woman's present or future employment status, in relation to or connected with any act or behaviour of sexual harassment may amount to sexual harassment.

In recent years, courts have interpreted the definition of sexual harassment at the workplace to include use of abusive and unprofessional language having a sexual undertone, interference with a woman's work, or creating an intimidating, offensive, or hostile work environment for a woman at her workplace, and humiliating treatment likely to affect the health and safety of a woman at her workplace. Unwarranted sexual advances, stalking, leering, inappropriate or offensive jokes or comments, physical gestures including caressing, touching, and hugging, sexually tinted gestures, derogatory comments on dressing or physical appearance, inappropriate or offensive messages, and intimidating or threating around sexual favours, are an indicative list of instances that could be considered as acts of sexual harassment.

Feedback on performance at work, exercise of human resource functions such as following up on unauthorized absence from work, management duly exercising their rights, constructive feedback on conduct, and gender-based discrimination or sexism in isolation, are some instances of acts that do not amount to sexual harassment.

What is a workplace?

A workplace means the primary place of employment as much as the physical office space where one works. However, as flexible workforce engagement models and remote working models evolve, the conventional understanding of a 'workplace' has also evolved over the years. Currently, the definition per the law is broad enough to cover places and instances that come within the purview of an 'extended workplace' i.e., any place visited by the employee arising out of or during the course of employment,

In recent years, courts have interpreted the definition of sexual harassment at the workplace to include use of abusive and unprofessional language having a sexual undertone, interference with a woman's work, or creating an intimidating, offensive, or hostile work environment for a woman at her workplace, and humiliating treatment likely to affect the health and safety of a woman at her workplace.

including transportation provided by the employer for the purpose of commuting to and from the place of employment. For example, any place where a woman travels for work, business trips, team building sessions, seminars, and conferences, whether at or outside office premises, and commutes to and from any place as part of her employment. Sexual harassment over cyberspace, including sending offensive or derogatory messages via electronic media, also amounts to sexual harassment under the definition of the law since an employee working remotely or from home, is also covered as a 'workplace' under the Act.

Other obligations that should be taken into consideration by an employer

In addition to those mentioned above, an employer should comply with the obligations, including:

- a. Each organization with at least 10 employers must mandatorily frame and publish a policy on prevention of sexual harassment at workplace which strongly emphasises on the organisation's zero tolerance policy. The policy must lay down in detail the organisation's method of receiving and redressing complaints of workplace harassment and the consequences of being found guilty of sexual harassment.
- b. Each employer must organise workshops and awareness sessions to sensitize employees to aid in prevention of workplace sexual harassment. As a part of training, employees must be made aware of the provisions and protections under the Act and the organisation's prevention of sexual harassment at workplace policy.
- c. Employers must also conduct orientation and training sessions for members of the IC to train them to sensitively and effectively redress the complaints received.
- d. Every organisation is required to file a report annually inter alia detailing the training/awareness sessions conducted, nature and number of sexual harassment complaints received and their status during the year.
- e. Employers must ensure that information regarding the contents of the complaint, identity and address of the victim, respondent and witness; inquiry proceedings and the actions taken based on the recommendations of the internal complaints committee are not published or communicated to the public, press and media.
- f. Organisations must strictly deal with false complaints of sexual harassment and impose penalties as per the Act.



AISHWARYA MYSORE RAVI Associate



VINDUJA MENON Associate

g. Employers must provide assistance to the complainant if she chooses to file a complaint in relation to the offence under the Indian Penal Code, 1860 or any other law for the time being in force.

Internal Complaints Committee under the Act

Every employer with at least 10 employees is required to constitute an internal complaints committee (IC) comprising at least a chairperson, 2 members, and an external member in accordance with the Act. The law has prescribed that at least half of the members of the IC are women. If an employer has offices or administrative units in different locations, an IC must be established in every location where at least 10 employees are engaged.

As a general rule, members of the IC must be impartial, must not have any personal knowledge or interest in the case under investigation and must not be connected to the case in any manner. Further, the external member on the IC should be an independent person who is associated with an NGO or committed to the cause of women or person familiar with issues relating to sexual harassment.

If a complainant has to file a complaint of sexual harassment and the employer has not established an IC on account of having less than 10 employees or the complaint is against the employer himself, the employee may file a complaint with the local complaints committee. Employers may, as a good practice, educate employees about the presence and functioning of the local complaints committee.

Who can file a complaint?

The Act as it stands today only provides protection to women. Individuals of other genders cannot file a complaint of sexual harassment under the Act. However, the Act defines 'respondent' as a person against whom the aggrieved woman has made a complaint and does not specify a particular gender. The High Court of Calcutta² held that complaints of sexual harassment against a person of the same gender as the complainant are maintainable under the Act. The court opined that there is nothing under the Act that precludes a same-gender complaint and that a woman can also hurt the modesty or dignity of another woman. Although the law protects only women against sexual harassment, certain progressive employers have put in place a gender-neutral policy which protect the entire workforce irrespective of the gender of an individual.

In case an aggrieved woman is unable to file the complaint on account of physical or mental incapacity, or death, her relative or friend, co-worker, psychologist or psychiatrists, legal heir (or, any person who has knowledge of the incident, with the written consent of her legal heir), etc. as prescribed under the Act, may file the complaint on her behalf. An aggrieved woman need not file a complaint with the IC in person. A complaint may be submitted through another person, electronically, or through any other media³.

The Act and Rules are silent with respect to anonymous complaints of sexual harassment. The Act neither recognizes nor provides the procedure for receiving and redressing anonymous complaints of sexual harassment. In light of this, the Delhi High Court opined that anonymous complaints of sexual harassment are most likely to be dismissed⁴. However, organisations through their internal policies may extend the protection to receive and accept anonymous complaints of sexual harassment even though there is no obligation to under the law to do so.

The Act does not provide for the IC to take suo moto cognizance of an incident of sexual harassment at the workplace and initiate an inquiry. IC may take up a complaint only upon receipt of a written complaint from an aggrieved woman or from another person on her behalf.

Timelines for receiving and redressing complaints

Action	Timeline
complaint of sexual harassment at	Within 3 months from the date of the incident and in case of a series of incidents, within a period of 3 months from the date of the last incident. Timeline may be extended by 3 months for filing a complaint, if there is sufficient cause.
A copy of the complaint is to be shared with the respondent.	Within 7 days from receipt of the complaint.

- 2 Malabika Bhattacharjee v. Internal Complaints Committee, Vivekananda College and Ors. 2021(1) SCT 431
- 3 Shital Prasad Sharma v. State of Rajasthan and Ors. (2018 SCC OnLine Raj 1676)
- 4 Manjeet Singh v. Indraprastha Gas Limited 236 (2017) DLT 396

Respondent is required to reply to the complaint along with a list of supporting documents, and names and addresses of witnesses.	Within 10 days from receipt of the copy of the complaint.
The inquiry should be completed by the IC.	Within 90 days from receipt of complaint.
The report must be issued post the completion of the inquiry.	Within 10 days from completion of the inquiry.
The employer is required to implement IC's recommendation(s).	Within 60 days from receipt of report from IC.
An appeal may be filed against the decision of the IC.	Within 90 days from receipt of recommendations.

Conclusion

Receiving and redressing a workplace sexual harassment complaint in a sensitive and effective manner is critical for every organisation. Employers must be aware of the sensitivity involved in sexual harassment complaints and the legal framework that deals with the prevention, prohibition, and

redressal of sexual harassment of women at the workplace. By adhering to the legal framework. having a well-defined policy per the Act, conducting fair and transparent investigations, and creating a supportive environment for employees, employers can contribute to a safer and more inclusive workplace for all, while being compliant with applicable laws. Employers should adopt more contemporary approaches to address workplace sexual harassment issues and ensure a safe working environment for all such as a gender-neutral prevention of sexual harassment at workplace policy, focus on employee sensitisation, and bystander intervention training.

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Veena is a Partner in Trilegal's market-leading Employment Law practice. She has a wealth of experience in advising domestic and multinational organisations on complex issues relating to workforce structuring, employee benefits (including stock-linked benefits), contentious senior managerial exits, reductions in force, and closures. Veena also routinely advises on employment law matters stemming from domestic and cross-border M&A transactions, including with respect to acquihires, employee transfers, and post-merger integrations.

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 $\textbf{\textit{Disclaimer}} - \textit{The views expressed in this article are the personal views of the authors and are purely informative in nature.}$

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TO LISTOR NOT TO LIST

(SEBI Introduces Mandatory Listing of Subsequent NCD Issuances)

SEBI has been implementing several measures since 2020 to strengthen and improve the bond markets in India, including increased disclosures, compliances and monitoring apart from tweaking several procedural aspects involved in the issuance of listed NCDs.



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Partner



he Securities and Exchange Board of India ('SEBI') has, with effect from September 20, 2023, amended the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 ('SEBI LODR').

1. Amendments

All Non-Convertible Debt Securities ('NCDs') issued on or after January 1, 2024 by entities which have any listed NCDs outstanding as of December 31, 2023, will have to be mandatorily listed. Further, such listed entities can choose to list previously issued NCDs which are outstanding as of December 31, 2023, but such listing is not mandatory.

The exemptions to these amendments include (a) NCDs issued pursuant to an agreement between issuer and multilateral institutions provided these NCDs are locked-in, unencumbered and held till maturity and(b) capital gains tax-exempt bonds.

Further, SEBI, in the agenda of its board meeting, has clarified that these amendments will not apply to issuances under Chapter V of the Securities and Exchange Board of India (Issue and Listing of Non-Convertible Securities) Regulations, 2021 i.e., non-equity regulatory capital instruments issued as per guidelines issued by the Reserve Bank of India ('RBI').

2. Objectives

SEBI's primary objectives, amongst others, appear to be(a) to introduce transparency in price discovery for all NCD issuances (using the miserly threshold of INR 50 crore for the electronic book building process of privately placed NCDs ('EBP')), (b) resolving issues surrounding exits for investors of unlisted NCDs by providing transparency in pricing and a larger pool of potential buyers, (c) resolving information asymmetry between issuances of listed NCDs and of unlisted NCDs, (d) creating a level playing field for investors of listed NCDs and of unlisted NCDs, absent which investors of unlisted NCDs can potentially earn far higher returns when compared to investors of listed NCDs(given the EBP mechanism).

SEBI has also sought to resolve additional concerns that it perceives i.e., (a) providing an established grievance redressal mechanism which was otherwise, in its view, not available to investors of unlisted NCDs, (b) providing a settlement and clearing mechanism that is not prone to misuse or counterparty risks, (c) avoiding confusion at the ISIN level where an investor may not know if an ISIN pertains to listed NCDs or unlisted NCDs, and (d) avoiding possible mis-selling of unlisted bonds.

3. Analysis

SEBI has been implementing several measures since 2020 to strengthen and improve the bond markets in India, including increased disclosures, compliances and monitoring apart from tweaking several procedural aspects involved in the issuance of listed NCDs. These recent amendments are intended to further deepen the bond markets.

However, these amendments may not have the desired knock-on effect, and may, in fact, push investors and issuers to voluntarily delist existing

listed NCDs or turn to other sources or avenues of fund raising, including traditional routes like banks and non-banking finance companies ('NBFCs'), where possible.

Several key investors will be severely impacted. For example, Category II alternative investment funds ('AIFs'), which are required by SEBI to invest largely in unlisted securities, will have a limited universe of issuers available which have no outstanding previously issued listed NCDs. AIFs will, therefore, have to tread with far more caution now, while balancing their investment portfolios. Similarly, the universe of issuers available to SEBI-regulated foreign portfolio investors ('FPIs') will also shrink considerably, at least for those end-uses where FPIs could invest in unlisted NCDs i.e., end-uses other than'real estate business', 'capital market' and purchase of land. The flexibility given by the RBI and SEBI to FPIs in this regard may now prove to be insignificant.

It is worth noting that no exemption has been provided by SEBI for intra group exposures, for example, NCDs issued by subsidiaries or wholly owned subsidiaries to their holding company or parent respectively, which was included by SEBI in the agenda of its board meeting, but was excluded from the final set of regulations published by SEBI.

Further, by requiring compulsorily listing of all subsequent issues of NCDs, several issuers will eventually fall under the ambit of 'high value debt listed entities' which comes with an additional set of compliances, at par with entities which have issued listed equity securities.

SEBI has already implemented several measures for issuers of private placed listed NCDs in relation to disclosures and compliances and is in the process of implementing several others, for e.g., the plan to bring disclosures in privately placed NCDs at par with public issuances of NCDs. Given these, the actual timelines for completing transactions originally envisaging unlisted NCDs by issuers having listed NCDs may be severely affected as a result of the timelines, disclosures and other compliances involved in issuance and listing of NCDs.

It may now also be practically impossible for issuers having outstanding listed NCDs to execute bilateral arrangements with investors and arrangers of unlisted NCDs, which are otherwise fairly common.

4. Conclusion

There are several intended and unintended consequences of these amendments. However, what is a major cause of concern is that SEBI's approach - gauged from several recent amendments introduced by it - appears to be of treating listed equity securities and listed equity issuers at par (to a certain degree) with listed NCDs and listed NCD issuers. The reality, however, is that both operate very differently and with varying results.

SEBI, with these amendments, is seeking to regulate not just listed securities or entities which have issued such securities (in so far as such securities or investment therein is concerned) but also to regulate the domain of unlisted NCDs, which is outside its jurisdiction. It remains to be seen, therefore, if these amendments stand the test of time.

The recent amendments may not sound the death knell for the listed bond market just yet and there may yet be several takers for listed NCDs, but these amendments are a clear signal for investors and issuers alike, of what is to come.



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Disclaimer – The views expressed in this article are the personal views of the author and are purely informative in nature.

DAWN OF A NEW REGIME GOVERNING

INDIAN DEBT SECURITIES MARKET

The regulatory changes introduced by SEBI, elevates the Indian debt market's efficiency and transparency with the global standards and is set to attract a diverse pool of investors leading to growth of the Indian debt securities market.

he Securities and Exchange Board of India ("SEBI") has, in the last quarter, introduced a slew of pivotal measures geared towards strengthening the existing investor protection regime and fortifying the architecture of the debt securities market in India.

Unified Disclosures for Private Placement and Public Issue

SEBI has vide the Second SEBI NCSs Amendment¹ unified the disclosures for public issuance and private placement of non-convertible debt securities. The Second SEBI NCSs Amendment has been introduced to reduce the asymmetry in disclosures between public issuances and private placement of Non-Convertible Securities ("NCSs") and eliminate repetition in related disclosures. This alignment in disclosures, however, will put additional burden of making elaborate disclosures on entities proposing to issue NCSs by way of private placement.

Introduction of General Information Document and Key Information Document

The Second SEBI NCSs Amendment has also introduced the concept of **General Information Document ("GID")** and **Key Information Document ("KID")**. The GID is required to be

filed by an entity seeking to list its NCSs or commercials papers on the stock exchange, as its first issuance. Such GID will remain valid for a period of one year from the date of opening of the first issuance of NCSs/ commercial paper being offered there under. Thereafter, the entity will only be required to file a document with minimal disclosures, i.e. the KID, for every subsequent issuance it proposes to undertake during the validity period of the GID.

While the GID is intended to function as a comprehensive dossier which will contain disclosures pertaining to the issuer and the key terms of the NCSs/ commercial papers being offered there under, the KID shall contain the material changes since filing of the GID along with the specific commercial terms of the NCSs/ commercial paper being issued there under. Introduction of the concept of GID and KID will prevent multiplicity of placement memoranda being filed by entities and will further reduce the cost of operations involved in issuance and listing of NCSs and commercial papers.

At present, the compliance for filing the GID along with the KIDis on a 'comply or explain' basis and will be mandatory from March 31, 2024 onwards. However, directions in relation to the manner in which the justification for such non-compliance is required to be disclosed is yet to be issued by SEBI.



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¹ SEBI (Issue and Listing of Non-Convertible Securities) (Second Amendment) Regulations dated July 3, 2023.

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Listing of Subsequent Issuances

SEBI has vide the Fourth SEBI LODR Amendment², made it mandatory for entities whose NCSs are listed on a stock exchange to list all subsequent NCSs it proposes to issue from January 1, 2024 onwards. A listed entity having unlisted NCSs outstanding as on January 1, 2024 may however, opt to list such NCSs on any stock exchange.

Further, the Fourth SEBI LODR Amendment requires a listed entity proposing to list NCSs on the stock exchanges from January 1, 2024 onwards, to list all outstanding unlisted NCSs previously issued by it, within three months of listing of the proposed NCSs.

This move is aimed at providing an impetus to the retail investors to participate in the uncharted Indian bond markets, facilitating transparency in price discovery of NCSs and for providing material information about the issuer and the issue to such inhibited retail investors. Yet, however, it imposes significant restrictions on entities seeking to access debt markets for targeted fundraising through issuance of unlisted debt securities, which have less stringent compliance requirements vis-à-vis the listed debt securities.

Fund Raising by Large Corporates

SEBI vide the Large Corporates Circular³ has revised chapter XII of SEBI's 'Master Circular for Issuance NCSs⁴, which sets out the framework for issuance of debt securities by certain 'Large Corporates', that meet the criteria set out therein. The Large Corporates Circular will come into effect from April 1, 2024, for entities following April-March as their financial year; and January 1, 2024, for entities following January-December as their financial year.

The Large Corporates Circular mandates Large Corporates to raise a minimum of twenty-five percent of its qualified borrowings, as set out under the Large Corporates Circular, in a financial year, through issuance of debt securities that are required to be met over a contiguous period of three financial years, failing which such large corporates will provide a one-time explanation in their annual report for financial year 2024.

The Large Corporates Circular also provides incentives to the Large Corporate in the form of reduced annual listing fees and credit in the form of reduction in contribution to the Core Settlement Guarantee Fund of LPCC, in the event there is a surplus in the requisite Qualified Borrowing of the Large Corporate.

The circular also provides for corresponding dis-incentives, in the event there is a shortfall in the requisite qualified borrowing of the Large Corporate. This move is aimed at operationalizing the announcement At present, the compliance for filing the GID along with the KID is on a 'comply or explain' basis and will be mandatory from March 31, 2024 onwards

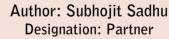
made by Central Government in Union Budget for the year 2018-19, which, inter-alia, required SEBI to consider mandating, beginning with large corporates, to meet one-fourth of their financing needs from the debt markets. Additionally, mandating Large Corporate to raise debt by way of issuance of debt securities will further aid in bolstering growth of the Indian debt securities market.

Dispute Resolution in the Indian Securities Market

SEBI, vide the ODR Master Circular, has streamlined the existing dispute resolution mechanism in the Indian securities market under the aegis of the stock exchanges and depositories by establishing a common online dispute resolution portal for online conciliation/ arbitration. This conciliation and arbitration mechanism is available for resolution of disputes arising between the investors and a host of regulated entities identified under the ODR Master Circular. Prior to the circular, the dispute resolution mechanism extended only to the depository participants, stockbrokers, commodity brokers, listed companies and registrars and transfer agents. This transformative approach, adopted by SEBI, of leveraging technology to address disputes, promises a more swift and efficient approach for resolution of such disputes arising in the Indian debt securities market.

The regulatory changes introduced by SEBI, elevates the Indian debt market's efficiency and transparency with the global standards. With enhanced disclosure requirements for public as well as private placement of debt securities, reduced cost of operations and streamlined online dispute resolution framework, the revised landscape is set to attract a diverse pool of investors and promote development of the debt securities market. As India positions itself as a global financial hub, these amendments signify the nation's commitment to fostering a robust, investor-friendly debt securities market.

Nevertheless, the amendments will have to be examined from the perspective of listed entities issuing debt securities, whereby such entities will have to mandatorily list the debt securities. This move will contribute to the everincreasing compliance burden on the part of such listed entities.



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² SEBI (Listing Obligations and Disclosure Requirements) (Fourth Amendment) Regulations dated September 19, 2023.

³ SEBI circular titled 'Ease of doing business and development of corporate bond markets – revision in the framework for fund raising by issuance of debt securities by large corporates (LCs)' dated October 19, 2023.

Master Circular for Issue and Listing of Non-convertible Securities, Securitised Debt Instruments, Security Receipts, Municipal Debt Securities and Commercial Paper dated August 10 2021.



Harnessing the Wind: India's Journey into

Offshore Wind Energy

The Government's ambitious plans to develop OWE projects, coupled with its favorable geographical location and vast coastlines, create a conducive environment for this clean and renewable energy source to thrive

Introduction

With a coastline of over 7,500 km, India is well placed to exploit its potential to generate **Offshore Wind Energy ("OWE")**, which would not only cater to India's growing energy demands, but also help India achieve its target of 'net zero'. India intends to harness the 'offshore' wind capacity in the coastal states of Gujarat and Tamil Nadu. To that extent, MNRE in October 2015 notified the "*National Offshore Wind Energy Policy*" which provides the framework for the development of OWE projects.

Pursuant to this, the Ministry of New and Renewable Energy ("MNRE") recently notified the second revision to the 'Strategy for Establishment of Offshore Wind Energy Projects' on September 26, 2023 ("Strategy Paper") for effective and strategic implementation of the policy. The Strategy Paper sets out different models that may be adopted for the development of OWE projects in India through public private partnerships. This comes against the backdrop of MNRE and National Institute of Wind Energy ("NIWE") planning to conduct the auction of India's first OWE project near Tamil Nadu.¹

The Strategy Paper envisages three models through which the MNRE will develop the projects:

(i) Model A –for areas where MNRE/ NIWE has already carried out, or proposes to carry out, the studies and surveys for the development of offshore wind farms. OWE will be procured from these identified zones through competitive bidding process and necessary assistance will be provided by the Central Government in the form of Viability Gap Funding ("VGF").² At present, sites of 0.5 GW off the coast of Gujarat and Tamil Nadu respectively has been identified for the implementation of Model A.

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¹ "Government to Auction First Offshore Wind Site in February 2024", reported by Mercom India on September 28, 2023, available at https://www.mercomindia.com/auction-first-offshore-wind-site-february-2024#.

² Viability Gap Funding means a one time or deferred grant provided by the central government under the VGF scheme to make infrastructure projects commercially viable.

INSIGHTS INSIGHTS



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- (ii) Model B-the zones identified by NIWE will be allocated to developers for a fixed period on a lease basis through a bidding process. The developers will have exclusive rights over the seabed zone allotted to them and the power generated from such projects may be used either for captive consumption or sold to third parties under power purchase agreements. The developers can claim the benefit of renewable energy credits and carbon credits as may be determined by the Central Government. No financial assistance in the form of VGF is envisaged.
- (iii) Model C —the developer will be allowed to identify any project site within the exclusive economic zone, except for the sites already identified under Model A and Model B. The allocation of seabed will be done through a bidding process, which may be carried out either by MNRE or any other authority as may be designated by the Central Government. The developer conducting the study/ survey may submit a proposal to develop the site surveyed and such developer will have the right of first refusal in the bidding process. Like Model B, developers can claim the benefit of renewable energy credits and carbon credits as may be determined by the Central Government from time to time, however, no VGF will be provided to the developers.

Recently, MNRE had released the draft OWE tender documents in public domain to invite stakeholders' comments, and it is expected that India will publish its first OWE tender by the first quarter of 2024, and the tenders for the remaining sites by the end of FY 2024-25.³

OWE in other jurisdictions

Some of the measures adopted in other jurisdictions, specifically in United Kingdom, to promote the development of OWE are:

- (i) Contracts for Difference ("CFD"): The UK Government provides developers with protection from volatile wholesale electricity prices under private long-term private power purchase agreements. CFDs has been the driving force behind the success of OWE projects in UK.
- (ii) Establishment of the Offshore Wind Acceleration Taskforceto streamline the approval process reducing the time required to obtain consents for new OWE farms from four years to one year.
- (iii) Subsidies and benefits announced on plant and machinery investment made until March 2026.

Challenges in India

The development of OWE projects in India faces several challenges including:

Regulatory and Policy Framework: The absence of clear, long-term policies and regulations and frequent issuance of draft RFPs with no actual actions being undertaken by the government, can deter investors and developers. A stable and investor-friendly regulatory environment is essential for project development.

With continued investment, innovation, and collaboration between the Government, industry stakeholders, and research institutions, India's OWE sector is poised to become a beacon of sustainable energy development, paving the way for a cleaner and more resilient energy future for the country

Lack of Infrastructure: Developing OWE projects requires significant infrastructure, including sub-sea grid connections and pooling substations. India currently lacks the necessary infrastructure to support large-scale offshore wind development, which can lead to increased project costs and delays.

Environmental and Ecological Concerns: OWE projects can have environmental and ecological impacts, including disturbance to marine ecosystems, migratory bird routes, and fishing communities. As a first step, environmental studies and appropriate clearances are required to be in place in line with the United Kingdom's bidding process.⁴

Costs and Financing: OWE projects are capital-intensive, and financing can be a major challenge. As discussed above, the Government of India, at present, is considering to provide financial assistance in the form of VGF only under Model A.

Cable Laying and Maintenance: Maintaining underwater cables and transmission infrastructure in corrosive marine environments can be

technically challenging, time consuming and expensive. This has been one of the major reasons for the delay in India's first OWE tender.⁵

Conclusion

The Government's ambitious plans to develop OWE projects, coupled with its favorable geographical location and vast coastlines. create a conducive environment for this clean and renewable energy source to thrive. While challenges such as capital costs, environmental considerations, and integration must be addressed, the momentum gained in the OWE sector in India is encouraging. With continued investment, innovation, and collaboration between the Government, industry stakeholders, and research institutions, India's OWE sector is poised to become a beacon of sustainable energy development, paving the way for a cleaner and more resilient energy future for the country.

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³ "Tenders for seven offshore wind energy blocks in Tamil Nadu soon", reported by the Economic Times on September 29, 2023, available at https://economictimes.indiatimes.com/industry/renewables/tendersfor-seven-offshore-wind-energy-blocks-in-tamil-nadu-soon/articleshow/104026742.cms#.

Please refer to Habitats Regulations Assessment, available at https://www.thecrownestate.co.uk/round-4/round-4-plan-level-habitats-regulations-assessment/

^{5 &}quot;Stumbling blocks delay India's first offshore wind tender"reported by the Hindu Business Line on June 2, 2023, available at https://www.thehindubusinessline.com/markets/commodities/indias-first-offshore-wind-tender-stuck-on-two-counts/article66923782.ece.

EVOLVING FUTURE OF WORKFORKE IN INDIA

In order to succeed in this evolving landscape, the workforce in India needs to be adaptive and eager to continuously upskill, while employers must invest in their workforce's development.

Introduction:

Since the era of Independence, India can be said to be an agrarian economy where most of the people have been carrying out the farming activities. Most of the employment avenues have also been associated with the jobs required in farming/agriculture sector. Recently, due to the advent of technology such as Information Technology ("IT") and Information Technology enabled Services ("ITeS"), in contrast to agriculture sector, the service sector has been majorly contributing to the Indian economy.

Over a period of time, industrialization and evolution of economy of Indiahas led to employment being generated in organized sectors including factories and offices, etc., where employees work in anorganized sector during their fixed office hours. Keeping in view of the said pattern, the labour and employment laws in India were enacted in accordance with International Labour Organisation (ILO) standards. For instance, the provisions of the Factories Act, 1948 and the local state shops and establishment enactments prescribed that the normal working hours of an employee shall not be exceeding 9 (nine)/8 (eight) hours a day and 48 (forty-eight) hours a week. It also imposes certain restriction such as prohibition of employment of women in night shift etc.



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MANISHI PATHAK
Founder and Managing Partner



Gig and Platform Employees

The rapid advancement of technology and evolving societal trends require a more flexible and barrier free employment structure, which must not be governed by the regulations prescribed under the existing labour and employment enactments. Therefore, the concept of gig and platform employees is evolving in India driven by various factors, including the rapid urbanisation, young population, widespread adoption of smartphones and associated technology, increasing preference for flexible work arrangements and the growth of digital platforms connecting freelancers with employers etc. Such employees are usually referred to as consultants or business partners in the absence of specific provisions under Indian labour and employment enactments.

However, the non-applicability of any specific enactments also comes with challenges, such as job insecurity, inconsistent income and working hours, and a lack of traditional benefits like healthcare and retirement plans. Therefore, the Indian Government, in order to provide social security benefits to gig and platform employees, introduced a separate chapter under the proposed Code on Social Security, 2020 ("SS Code"), rendering benefits upon gig, platform and unorganised workers.

The proposed SS Code defined the concept of 'gig workers' as "a person who performs work or participates in a work arrangement and earns from such activities outside of traditional employer-employee relationship" and 'platform workers' as "a person engaged in or undertaking platform work which means a work arrangement outside of a traditional employeremployee relationship in which organisations or individuals use an online platform to access other organisations or individuals to solve specific problems or to provide specific services or any such other activities which may be notified by the Central Government, in exchange for payment". In fact, the chapters dealing with Employees Provident Fund ("EPF") and Employees' State Insurance ("ESI") also stipulate the framing of schemes for gig and platform workers. Recently, the Government of Raiasthan became the first State in India to enact "Raiasthan Platform Based Gig Workers (Registration and Welfare), Act, 2023 and certain other state Governments such as Karnataka and Maharashtra are also in the process of framing legislations to protect the interest of gig and platform workers and extend the social security benefits to them.

Impact of Automation and Artificial Intelligence ("AI")

Automation and AI technologies are revolutionizing the way people work across various sectors. While these innovations promise increased efficiency and productivity, they also raise concerns about job displacement, reduced job growth, adaptation to new roles, privacy and ethical concerns. In India, industries like manufacturing, customer service, and data entry are experiencing automation at a rapid pace. Currently in India, there is no legislative framework for the regulation of AI and its usage in industries.

Recently the Ministry of Electronics and Information and Technology (MEITY)has constituted a few committees for the introduction, implementation and integration of AI into the mainstream as part of Digital India Scheme. Further, NITI Aayog has been issued paper-

Remote work, compressed workweeks, and job-sharing are becoming increasingly common and many organizations have adopted flexible work arrangements, emphasizing on outcomes and productivity rather than physical presence

Principles for Responsible AI (available on https://www.niti.gov.in/sites/default/files/2021-02/Responsible-AI-22022021.pdf) and have taken steps for collaborating with several universities to devise strategy to enable the workforce in India to adapt and learn using AI tools.

In the absence of any specific legislation in India, the Information Technology Act, 2000 ("IT Act") primarily regulates the functioning and usage of computer system and software which may include AI. Similarly, newly enacted Digital Personal Data Protection Act, 2023 ("DPDP Act") also prescribes penalty for violation or breach in protection of data.

Changing Work Structure

Traditional working hours of 9 (nine) to 5 (five) work models are evolving to accommodate the changing expectations and needs of the gig workforce. Remote work, once considered a rarity, has become a norm due to advancements in technology and the Covid-19 pandemic. Remote work, compressed workweeks, and job-sharing are becoming increasingly common and many organizations have adopted flexible work arrangements, emphasizing on outcomes and productivity rather than physical presence.

During the Covid-19 pandemic, the Central as well as various State Governments released notifications directing organisations and employers to allow employees as far as practicable to work from home. For instance, Ministry of Commerce and Industry, released the work from home guidelines for establishments located in Special Economic Zones("SEZs"). There are certain enactments which also allow employees to carry out work from home, such as the Maternity Benefit Act, 1961, which allows female employees to work from home during their pregnancy provided their nature of employment allows them to do so. Similarly, the model standing orders for service sector released under the proposed Industrial Relations Code, 2020 ("IR Code"), also made the reference of the work from home structure subject to the agreement between employer and workers.

Similarly, certain State Governments, for instance Government of Karnataka carried out amendment under the Factories Act, 1948, allowing

employees to work under different shifts i.e., 6 (six) days a week, 5 (five) days a week or 4 (four) days a week depending upon the number of hours the employee works in a day. Similarly, under the draft rules notified by certain States under the proposed Occupational Safety, Health and Working Conditions Code, 2020 ("OSH Code"), the workers have been provided an option to work 6 (six) days a week, 5 (five) days a week or 4 (four) days a week depending upon the number of hours the employee work in a day.

The Indian Government has started adopting and shifting towards remote and flexible work structures thereby allowing organizations to open up opportunities for young individuals living in rural areas and smaller towns, who can now access a broader range of job opportunities without relocating to urban centers. This decentralisation of work is helping bridge regional economic disparities.

Organisations are also evolving their structures, promoting flatter hierarchies and encouraging a culture of innovation and collaboration by making relevant changes in their existing policies and handbook and introducing certain new policies such as "telecommuting" and "staggered working hours". This shift is not only driven by the need to attract and retain top talent but also to adapt to rapidly changing market dynamics.

Need for new skills and training:

To thrive in the evolving job market, workforce in India must adapt to the recent changes by acquiring new skills. The future of work in India demands a diverse

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skill set, including technical skills like data analysis and AI proficiency, as well as soft skills like adaptability, communication, and problem-solving.

The skills that are currently in high demand and are expected to remain relevant in the future include digital literacy, data analysis, critical thinking, creativity, adaptability, emotional intelligence. For individuals, this means taking the initiative to upskill and staying updated with industry trends. Online courses, bootcamps, and mentorship programs can be invaluable tools for gaining new skills.

Employers, on the other hand, should focus on providing opportunities for employee and creating development culture within organisations. The Central Government hadmade amendments in the Apprentices 1961, mandating Act, minimum period of compulsory

apprenticeship (training) in establishments and factories covered under the said enactment. In order to give effect to the provisions of the Apprentices Act, 1961, the education regulatory authorities like All Indian Council of Technical Education (AICTE) included apprenticeship as part of the course structure. In addition to it, the Central Government in order to promote skill development among the youths of India, has undertaken several initiatives such as introduction of various schemes including Pradhan Mantri Kaushal Vikas Yojna (PMKVY), Pradhan Mantri Kaushal Kendra, Technical Intern Training Program (TITP), Skill Impact Bond, Seekho or Kamao, Specified Skilled Worker (SSW), Market Lead Fee Based Services, Swades, Project Amber etc.

Conclusion:

With the rapid change in the dynamics and evolution of work environment in terms of rise of the gig economy, the integration of automation and AL. and the embrace of changing work structures, the Indian Government is taking all efforts by implementing changes, introducing new enactments and policies to skill the workforce and to provide them conducive environment to meet the requirements of the changing business needs across all its sectors. Further, in order to facilitate ease of doing business in India, the government has also provided several relaxations and exemptions from the labour and employment laws in order to reduce the burden of unnecessary compliance and obligations.

However, in order to succeed in this evolving landscape, the workforce in India needs to be adaptive and eager to continuously upskill, while employers must invest in their workforce's development. By addressing these challenges, India can harness the potential of its young, vast and diverse workforce to remain competitive on the global stage and promote inclusive economic growth.

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Manishi also has vast experience of delivering advisory support in areas of law, including but not limited to contentious commercial disputes, regulatory compliances (involving exchange control regulations in addition to other regulatory matters), compliance advisory under various corporate and commercial laws, rules etc. (under applicable Central and/or State).



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ANNUAL LEGAL ERA MALAYSIA LAW AWARDS 2023-24



EVERGREENING OF LOANS A stop diktat from the regulator!

The regulators have not defined the contours for the term 'evergreening' and it is probably intentional, as there is indeed no one way to describe these transaction structures

cross advanced as well as emerging economies, financial lenders have been known to provide last mile credit to borrowers they know to be insolvent or are likely to become insolvent. This practice is colloquially referred to as evergreening, extending and pretending, zombie lending or forbearance lending. Scholars have proffered various explanations behind this phenomenon. Often lenders evergreen bad loans to avoid writing-off their existing capital as per applicable provisioning norms. This ultimately causes misallocation of credit and regulatory intervention is therefore justified to keep a watch on such practices.

Indian banking sector is not new to this problem. Interestingly though, the regulators have not defined the contours for the term 'evergreening' and it is probably intentional, as there is indeed no one



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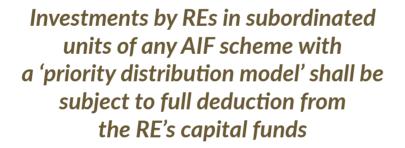


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way to describe these transaction structures. In a new twist to this age-old vice, the private credit market is now in the spotlight for evergreening.

In May 2023, the RBI governor Shaktikanta Das revealed that the central bank had noticed some innovative ways of concealing the real status of stressed loans. In October 2023, SEBI WTM Ananth Narayan G. specifically noted that many AIFs have been structured to allow NBFCs to circumvent extant regulations on recognition and disclosure of stressed assets. Against this backdrop, the structure that became prevalent was where the NBFC along with other investors invests in units of an AIF's scheme. Typically, the NBFC takes higher risk by investing in junior or subordinate tranches of AIF units, while other investors take lesser risk by investing in senior tranches. The AIF then lends this money to a stressed debtor company (which is also a borrower of the NBFC) by purchasing its bonds. The debtor company in turn uses this money to pay back the NBFC, avoiding immediate default on its loan. Effectively, an NBFC could use this structure to make additional investments into a stressed debtor company through an AIF only to avoid immediate default, bypassing the need to set aside capital for provisioning. While this is a simple classic example of evergreening, it is well known in the market that based on this model, various innovative transactions were structured, especially in cases of exposure to real estate and other risky sectors.



It was therefore not completely surprising that the RBI issued an instruction on December 19, 2023to its regulated entities (REs) including NBFCs to curb evergreening through AIFs. RBI prohibited an RE from investing in an AIF which has direct or indirect downstream investments in a company to which the RE currently has or anytime during the preceding 12 months had a loan or investment exposure. The RBI in a surprising move also stipulated that the REs that violate this rule must liquidate their investments in such

AIF within 30 days or make 100% provision on such investments. Further, investments by REs in subordinated units of any AIF scheme with a 'priority distribution model' shall be subject to full deduction from the RE's capital funds. While it has always been an issue which the RBI has highlighted to its RE during the course of its yearly inspection, such a diktat which has punitive ramifications is indeed new from the regulator.

As reference, Piramal Enterprises Ltd. (PEL) disclosed investments of Rs. 3817/- crores in AIF units. Out of this, only Rs. 653 crores have no exposure to any debtor company of PEL.PEL now plans to adjust the remaining Rs. 3164/- crores through capital funds or provisions. Similar impact would be seen on various other REs.

Beyond such immediate impact, this circular would have wider unintended ramifications as some industry veterans have cautioned. This is because the circular prohibits an RE from making any 'investment in any scheme of AIFs which has downstream investments either directly or indirectly in a debtor company of the RE'. Evidently, the circular does not merely restrict debt transactions.

Take for instance that National Investment and Infrastructure Fund (NIIF), which is registered as Category II AIF. If an RE (say a public sector bank) has invested in units of any scheme of NIIF, then NIIF would be prohibited from investing in the equity of any company which has borrowed from such a RE in the last 12 months.

Similarly, Small Industries Development Bank of India (SIDBI) is a critical provider of capital for SMEs and invests through AIFs. Such AIFs can no more invest in the equity of an SME if SIDBI has given a loan to such an SME within the preceding 12 months. Therefore, the RBI circular is likely to have wider implications for the financial sector beyond NBFCs.

Finally, this circular once again raises a larger regulatory governance issue. In June 2022, the Regulations Review Authority 2.0 had recommended that RBI should ideally place all draft instructions on its website for stakeholder comments and finalise them only after considering the feedback. While RBI has been following this practice, this process was not followed before issuing the December 19 circular. Probably, the warnings through the inspection reports were deemed sufficient by the RBI!

Having said the above, the regulatory intent behind the December 19 circular cannot be faulted on principles of financing. As a regulator, the financial health of its REs is of utmost importance and that is indeed the check the RBI is trying to keep. The uncertainty in the market that has followed could probably have been avoided through a discussion paper and public consultation, so as to make room for genuine cases of refinancing, as opposed to ever greening, to continue.



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Bombay High Court rules that monies received pursuant to an arbitral award was towards retirement from partnership,

Settlement of Family Dispute

hence, same should not be chargeable to

This ruling also highlights another important principle in respect of properties that might be received pursuant to a family arrangement; as the same is received against settlement of disputed rights and to avoid litigation, it is considered to be a capital receipt not chargeable to tax under the IT Act.

n a recent ruling of the hon'ble Bombay High Court, in the case of Ramona Pinto v DCIT [ITA No 2610 of 2018], the Court quashed reassessment proceedings against the taxpayerfor being bad in law while emphasising that reassessment proceedings under Section 148 of the Income-tax Act, 1961 ("IT Act") can be initiated only where the tax authorities have requisite belief that income has escaped assessment and not when the proceedings have been initiated merely to investigate the notion of whether income has escaped assessment, as was the case here.

Additionally, while going into the merits of the case, the court also held that the monies received by the taxpayer under the arbitral award was in respect of (i) her retirement from the partnership firm (even though the same was not expressly stated), and (ii) settlement of family disputes. Placing reliance on the settled jurisprudence on these questions of law, the court held that the monies under consideration are capital receipts not chargeable to tax under the IT Act.

Background

However,

The taxpayer's father had established a partnership firm in 1954 ("Firm"). Pursuant to several reconstitutions over the years, the taxpayer came to hold a 20% profit-share in the Firm by 1979. Subsequent to her father's demise in 1997, she inherited an additional 5% profit-share in the Firm, bringing her share in the Firm to 25%.

the taxpayer's brothers, without her knowledge, retired her from the Firm. Upon realisation of the same, disputes arose, and the matter went up to the Supreme Court where the following directions were provided: (i) matter was referred to arbitration, and (ii) payment of INR 50,000 p.m. was awarded to the taxpayer (in the interim). The taxpayer received a

sum of INR 5 lakhs under the interim award in FY 2007-08, which was not offered to tax. On being asked to justify this position during scrutiny proceedings, she submitted that the receipt was related to her retirement from the Firm and hence not taxable. This was accepted by the officer and no addition was made.



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During the arbitration proceedings, the parties arrived at consent terms pursuant to which the taxpayer relinquished all her rights and claims against her brothers and the Firm against which she received a consideration of INR 28 crores (with INR 7 crores received in FY 2009-10 and balance in 7 annual, equal instalments).

While filing her tax returns, the above was not offered to tax. In the note annexed to the return, it was submitted that the amount of INR 7 crores was received in relation to her retirement from the Firm and hence shall not be chargeable to tax. Such return was filed, processed and accepted by the DCIT.

Subsequently, however, reassessment proceedings were initiated against the taxpayer under Section 148 of the IT Act on the basis that the arbitration award was not submitted to the department. The same was received subsequently from the tax officer of the Firm; accordingly, this information served as the "reason to believe" that income had escaped assessment.

The tax officer passed an order taxing the entire INR 28 crores in FY 2009-10 under Section 28(iv) of the IT Act. On subsequent appeal to the CIT(A), arguments of bringing such income to tax as business income or capital gains was rejected; however, the entire amount was taxed under Section 56 (for consideration received for settlement of a composite bundle of right) of the IT Act. The ITAT upheld the order of the CIT(A) claiming while holding that income received under an arbitral award is a sort of "special income" and hence taxable.

Ruling

The High Court has held the following:

On the jurisdiction of initiation of reassessment proceedings

- In the taxpayer's own case, the tax officer had, in a previous year
 accepted the position (after scrutiny) that receipts pursuant to
 the interim order of the Supreme Court, are not chargeable to tax.
 Disputing this position in the year under consideration is a "change of
 opinion", which does not fulfil the pre-requisites of Section 148 of the
 IT Act.
- Further, the assessing officer has not only failed to bring on record any "new tangible material" but the reasons for reassessment provided by the tax officer also do not expound on whether and how the receipt is the nature of an "income". Therefore, while emphasizing that reassessment proceedings cannot be initiated merely to investigate whether income has escaped assessment, it was held that the burden of meeting the "reason to believe" condition has not been met and accordingly the reassessment is bad in law.

On the receipt of monies under the arbitral award

Receipt pursuant to retirement from Firm: The monies have indisputably been received pursuant to the consent terms / arbitral award. The terms of this award clearly provide that the taxpayer relinquishes all her rights and claims as a partner in the Firm. Hene, the only inference possible would be that she would no longer continue as a partner of the Firm (even though the same is not expressly provided). Therefore, the monies have been received by her pursuant to her retirement from the Firm.

Placing reliance on the decisions¹ of the Supreme Court, it was held that amount receivable upon retirement from the Firm could not constitute "income" for the purposes of IT Act. This is based on the principle that what the partner gets on retirement is the realization of a pre-existing right / interest. Such amounts are received against working out the rights / entitlements of the partner in the firm (that she inherently holds on account of her partnership interest) and not for the transfer of outgoing partners' interest to the continuing partners.

- Receipt pursuant to satisfaction of inheritance rights: The arbitration award also dealt with settlement of the taxpayer's inheritance rights under her father's will and any amount received in satisfaction of such rights have expressly been exempted from tax under Section 56(2)(vii) of the IT Act (now Section 56(2)(x)).
- Receipt pursuant to family arrangement: If the receipts are said to
 be relatable to a family arrangement, even then they would not be
 chargeable to tax. This is because an arrangement between family
 members is an agreement to either compromise on the disputed rights
 or "preserving peace, honour, security and property" of the family by
 avoiding litigation; such amounts should not be taxable².
- Receipt pursuant to damages: Even if the receipts are considered to be in the nature of damages, they are capital in nature and hence not taxable³.
- **General principle:** The settled position that unless expressly provided, a capital receipt does not constitute "income" has been reiterated while holding that the receipt under consideration here is a capital receipt. It was also held that it is the revenue's obligation to justify as to why a particular receipt constitutes "income" under the IT Act; this onus has not been so discharged by the revenue.

Comments

The ruling reaffirms several accepted judicial principles with respect to initiation of reassessment proceedings under Section 148 of the IT Act and the taxability of receipts of capital nature under the IT Act. However, it is pertinent to note that the pre-requisites for reassessment under the newly introduced Section 148A of the IT Act differs materially and hence need to be analysed independently.

It also reaffirms the principles established by previous rulings in respect of non-taxability of consideration received pursuant to retirement from a partnership firm. However, it should be noted that provisions of Section 45(4) and 9B of the IT Act (as they stand today) were not applicable in the assessment year under consideration here.

This ruling also highlights another important principle in respect of properties that might be received pursuant to a family arrangement; as the same is received against settlement of disputed rights and to avoid litigation, it is considered to be a capital receipt not chargeable to tax under the IT Act.



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¹ ACIT v. Mohanbhai Pamabhai [1987] 165 ITR 166 (SC), Prashant S. Joshi v. ITO [2010] 324 ITR 154 (Rombay)

Reliance has been placed on CIT v. AL Ramanathan [2000] 245 ITR 494 (Madras); CIT v. Sachin P. Ambulkar [2014] 42 taxmann.com 22 (Bombay); CIT v. R. Nagaraja Rao [2013] 352 ITR 565 (Karnataka)

CIT v. Saurashtra Cement Limited [2010] 325 ITR 422 (SC); CIT v. Abbasbhoy A. Dehgamwalla [1992] 195 ITR 28 (Bombay)

NAVIGATING COMPLIANCE WITH THE EMERGING

DATA PROTECTION

REQUIREMENTS - PRACTICAL STEPS REQUIRED TO PREPARE FOR MEETING DPDPA OBLIGATIONS

Need for Action is imminent as it is forecasted that the companies may not be given much time to comply with the requirements set forth by DPDPA.

fter reaching the noteworthy milestone of enacting the Digital Personal Data Protection Act (DPDPA) in 2023, India is currently anticipating the government's announcement of the law's effective date and the introduction of rules that align with the Act. This underscores the emerging need for entities to prepare and position themselves "on-their-marks" and "get set" before the Government blows the whistle.

India started immersing into a digital era with its robust digital payment infrastructure. Use of digital tools and remotecollaboration tools prolife rated further post COVID driving most entities to document, manage, transact, and communicate digitally. All such digital transactions and handling of data fall within the scope of the regulation, making DPDPA a crucial piece of legislation for the modern business world. Processing personal data in India or processing personal data of people in India digitally, will bring an entity within the DPDPA's radar irrespective of whether it is a business, healthcare or educational institutions, non-profit organizations, and even the government itself.

Need for Action is imminent as it is forecasted that the companies may not be given much time to comply with the requirements set forth by DPDPA.



IN-HOUSE ILE



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A lot has been already discussed in the past at various forums on the application of DPDPA and the requirements it specifies right from consent to cross border data transfer restrictions. This Article will focus on the practical steps that needs to be undertaken to be prepared to meet the emerging requirements set forth in DPDPA.

Practical steps to "get set" for Navigating compliance: Beyond the explicit legal requirements:

Data Mapping is the start-line to data protection. In order to regulate data practices, one must first understand what data we process. Thus, the first step for any entity would be to dig-deep, identify and map what data is collected, how is the data collected, why is the data collected, who is it shared with, and until when is the data stored.

Some entities may be certain about the inventory of applications/data stores that house personal data. The emerging privacy requirements obligate entities to take immediate action and track-down and monitor the data trails. B2B service providers will also have to bifurcate the data processing activities they undertake for their own benefits and those they do on behalf of other entities, as different obligations apply to each case.

Such data mapping exercise is not restricted to data collected post implementation of DPDPA. Most of the steps we discuss here applies also to the legacy data that was collected even earlier and are held by the entities.

Developing Data Governance Framework falls next in line, once there is comprehensive picture of the data that is handled (together its sources and uses). Defining the data governance practices that the company would want to adopt includes analysing the business's requirements and making crucial decisions that may impact business. Entities are required to keep a tab of the present and emerging requirements when creating the framework. We need to bear in mind that this involves an analysis of DPDPA and other laws that may apply to the nature of processing. For instance, processing of children's personal data, Aadhar information or financial information may entail additional obligations.

The objective of this exercise is to streamline processes in a manner balancing the businesses' needs and the legal requirements. Developing a Data Governance Framework thus entails substantial inputs from the top-management and decision-makers of the business and from key stakeholders of different departments. Deciding upon what data is required, at what points should one implement privacy notices and consent mechanisms, adopting internal policies, deciding on the technical safeguards to be implement - have become pivotal.

Internal Awareness, Training, Access Control and Monitoring of behaviour is crucial as employees/personnel within the organisation are frontline defenders of data protection. On the other hand, inadvertent human errors and non-conforming employees have been the cause of most data security incidents. Hence training employees on data protection practices have become indispensable. Beyond focusing on imparting an understanding of data protection and evolving threat landscape, such

B2B service providers will also have to bifurcate the data processing activities they undertake for their own benefits and those they do on behalf of other entities, as different obligations apply to each case.

training sessions should include disperse knowledge on secure data handling, password management and enforce strict adherence to the Data Governance practices adopted by the organisation.

Vendor management and updating contracts have become pivotal as DPDPA has casted substantial accountability on the entity that controls means and purposes of processing the data. This entails the requirement of appropriate vendor assessment and ensuring that all third-party service providers and tools (think of CRM Software, Cloud servers, payroll processors, email services, office productivity and collaboration tools for instance) used by the entity protects the data in the intended manner. Mere NDAs with vendors may not be sufficient the new law has created a stature to contractually pass-on certain other obligations to vendors.

Adopting Technical & Organisational Measures for protecting information security is another key step to data protection. Entities will have to adopt practices in line with the nature of data processed. Preliminarily, measures such as access controls, defined data storage and retention periods needs to be put in place.

Similarly, setting up a grievance redressal mechanism with personnel who will take up roles of handling the queries or requests from individuals has become obligatory. DPDPA enables individuals to request for information on or correction/modification or deletion of their data. Processes have to be set in place to help gather all information in respect of the requesting individual and take appropriate action, either through manual processes or use of automation tools available in the market.

Data breach monitoring and management is a prerequisite to meet the emerging requirements of rapid breach notification to authorities and affected individuals. Mechanisms should be set in place to monitor and identify any data leak or data incidents and immediately escalate the same for action. Further internal teams should be set up for quickly managing the breach through mitigating and containing the breach.

Deterrent penalties of up to 250 crores, establishment of a separate adjudicatory body in the pipeline, and market pressures are driving the entities towards commencing their compliance journey even though DPDPA has not come into effect yet.

Similar to how compliance with DPDPA extends beyond the explicit stipulations, adherence to the DPDPA surpasses mere legal conformity. It stands as a strategic imperative for businesses aiming to build trust and maintain a competitive edge. As we usher into an emerging data protection era, entities that proactively embrace and implement these measures will not only meet regulatory standards but also foster a culture of responsible data handling driving better business.



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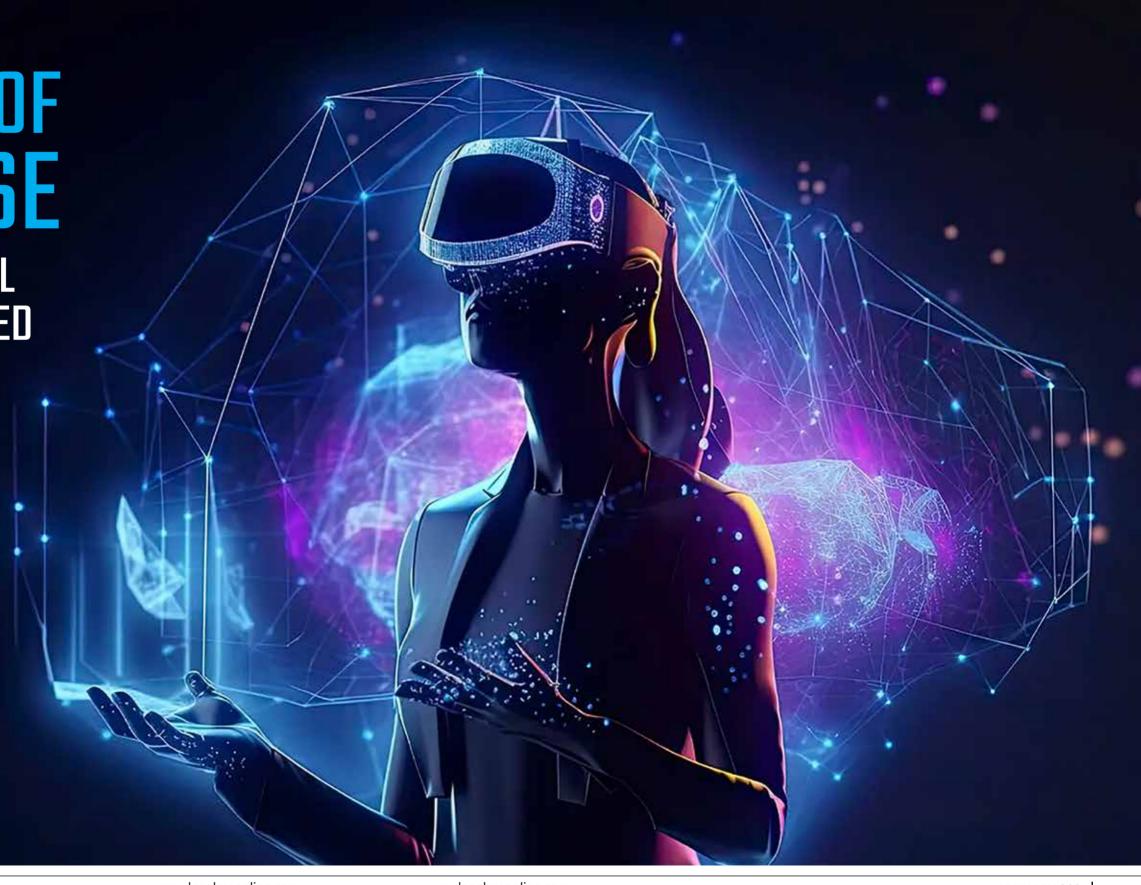


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REGULATON OF METAVERSE

IDENTIFYING THE LEGAL CONTOURS OF EXTENDED REALITY

As an undertaking aimed at bringing together representatives of significant stakeholders and policy- makers, the World Economic Forum is working on guiding states through its initiative "Building the Metaverse", which aims to "accelerate the development of metaverse governance" and serves to formulate a uniform metaverse governance mechanism.



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ase of interaction, accessibility, networking, and connectivity form the foundation of the contemporary data-driven era. Metaverse, the most expansive virtual space facilitating human interactions through extended reality, aptly reflects the technological headway of the 21st century.

Metaverse functionalizes itself as an advanced version of real-life simulation capturing interactions and exchanges concerning business, education, entertainment, healthcare, and even financial transactions. Users generally interact in the metaverse through "avatars" that operate as characters customized by users to personalize their interactions in the metaverse.

More simply, metaverse offers a platform for convergence of real and virtual worlds¹ through a multiplicity of interfaces hosting and exchanging massive volumes of data (including personal data) every second, giving rise to a holistic real-life simulation. From an industrial standpoint, it offers a promising commercial future as the global metaverse market is projected to reach US Dollars 996 billion by 2030.²

Amidst such technological advancement and the complex cobweb of data hosting structures surrounding metaverse, there exists considerable threat tousers' rights including privacy and security.

Understanding the regulatory complexities surrounding metaverse

With the promise of extended reality and the fundamental structure of hosting innumerable virtual worlds converged with the real world, data privacy is heavily compromised. While metaverse owners and hosts can ensure a few data protection standards such as privacy policy disclosures, singular notice and consent, and an overall firewall blocking unauthorised access, the foundational data protection standards such as right to explanation, right to erasure, data portability, and most importantly- the right to notice and consent for every instance of data accumulation, storage and transfer are compromised to facilitate the immersive metaverse experience. This is primarily due to the unviability of displaying popups prior to every interface through the metaverse, and the overall uncertainty concerning the jurisdiction of data protection laws governing metaverse in cases of the metaverse owners, users and hosts belonging to jurisdictions having varied data-protection standards. Further, as metaverse thrives on unregulated user-interactions and unmonitored information exchanges internationally, data localisation norms are rendered ineffective throughout the metaverse.

While the initiative of the World Economic Forum is a step-forth in the direction of striking deliberations concerning metaverse regulation, it remains a guiding policy yet to take concrete shape and lacks a legally binding force.



As metaverse not only simulates the real world but also accommodates it, criminal and civil wrongs including intellectual property infringements within the metaverse space are not uncommon. Despitecases of alarming legal breaches including exploitation and harassment of metaverse characters³ and trademark violations within metaverse⁴, the space remains unregulated. Further, there is absence of an authoritative forum to facilitate the resolution of disputes concerning metaverse and its characters as metaverse operationalizes itself in an apparatus devoid of national boundaries.

Metaverse also unravels the possibility of legal breaches unique within the metaverse space, such as issues concerning virtual asset ownership verification. Brands operate through the metaverse either by providing real products and services through a metaverse-sourced input, or by providing virtual simulations of their products and services within the metaverse in exchange of crypto-currency or digital assets. In the case of brands operating through the latter, their products serve as virtual assets which retain, appreciate, or depreciate in terms of their value, analogous to the value of digital asset. In such cases, regulatory flaws concerning standardization of ownership of virtual assets within the metaverse and resolution of asset ownership-related disputes, particularly amidst uncertainty surrounding fintech remain issues unique to the metaverse, requiring a nuanced regulatory regime.

Dharitri Ganguly & Saptaparna Biswas, 'The metaverse of harassment and hate' (Times of India, 2022), http://timesofindia.indiatimes.com/articleshow/92897196.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cpost>.

Evolution of metaverse regulation

While metaverse is majorly devoid of effective regulations, jurisdictions such as the European Union are on their way to undertake the necessary policy-decisions concerning digital rights and an overall secure environment to users within the metaverse. However, proposed metaverse regulation initiative⁵ restricted to European Union's jurisdiction. Further, while it aims to address issues including technological ecosystem and digital rights, it does not appear to address the cardinal concerns of metaverse being threats to users' digital privacy, breaches of conventional laws and regulatory void concerning issues unique to the metaverse. Consequently, it appears less comprehensive.

As an undertaking aimed at bringing together representatives of significant stakeholders and policy-makers, the World Economic Forum is working on guiding states through its initiative "Building the Metaverse", which aims to "accelerate the

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development of metaverse governance" and serves to formulate a uniform metaverse governance mechanism. While it is a policy document of non-binding character, it has struck substantial deliberations surrounding the uncertainty concerning metaverse regulation.

Deliberations also suggest the extension of conventional legal order within the metaverse space. However, there has not been much global implementation of any metaverse-related policy.

The way forward

Metaverse regulation is at its nascent stage of evolution globally. While the European Union has initiated its regulation of metaverse, it's restricted to digital rights and enabling the technological infrastructure supporting metaverse and is limited to securing legal rights within its own jurisdiction.

The viability of extending conventional laws within metaverse coupled with principles of private international law including renvoi(sub-set of private international law to determine the forum and applicable law depending on the jurisdiction of cause of action and nationality of parties, in cases of international disputes) to resolve inter-jurisdictional disputes concerning metaverse can be considered as a remedy for the limited purpose of resolving disputes.

However, ensuring compliance of law would still be a challenge in such cases. Further, issues unique to the metaverse such as asset-ownership verification would remain unresolved even if conventional laws are extended within the metaverse.

Such unique issues call for a meticulously planned regulatory design aimed at not only resolving the conventional legal breaches and privacy infringements, but also catering to the niceties peculiar to metaverse.

While the initiative of the World Economic Forum is a step-forth in the direction of striking deliberations concerning metaverse regulation, it remains a guiding policy yet to take concrete shape and lacks a legally binding force.

Therefore, a globally uniform legal order harmonizing the interests of all the states and stakeholders, and addressing data-security, privacy and conventional law breaches is needed, which would not only resolve the jurisdictional uncertainty, but would also address the regulatory void concerning issues unique to the metaverse, thereby ensuring the privacy and security of users as they engage themselves in the seamless metaverse experience.

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Comprehensive Examination of the Implementing Regulations of



The Regulations allow the transfer or disclosure of personal data to an entity outside the Kingdom, with the condition that it is restricted to the minimum extent necessary to achieve the intended goal.



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he forthcoming article will offer a comprehensive examination of the implementing regulations of data protection laws in KSA, providing insights into the Regulation on Personal Data Transfer Outside the Geographical Boundaries of the Kingdom. Additionally, it will draw a concise comparison with the General Data Protection Regulation (GDPR) to highlight key points of convergence and divergence.

The recently introduced Implementing Regulations for the Personal Data Protection Law entail a thorough analysis of the obligations applicable to all entities, with the exception of those utilizing personal data for personal or familial use.

The regulations meticulously outline the rights of Personal Data Subjects. For instance, upon receiving a request, the controller must respond within 30 days, with possible extensions for complex inquiries. Emphasizing key rights, the right to be informed, access, data copy, restriction, and destruction rights are specified.

Additionally, consent is crucial for processing, it must be explicit, with the right to revoke. Consent serves as both the beginning and the end of the data processing journey. The Regulations cover as well incapacitated subjects, various data types, processing purposes, and disclosure of personal data.

The controller, overseeing the Personal Data process, bears significant responsibilities to ensure precise execution, safeguarding data privacy. The competent authority will regulate entities issuing accreditation certificates to controllers and processors to ensure that individuals are appropriately positioned in their respective roles.

The controller's key obligations include taking essential measures, to ensure concealing the identity of the Personal Data subject (anonymization) and minimal data collection. Additionally, the controller must refrain from reproducing official documents identifying the Personal Data Subject, except when requested by a competent public entity or as required by law.

Moreover, verification and inspection procedures ensure regular protection of personal data, allowing Personal Data Subjects to lodge complaints within 90 days, the competent authority will subsequently take the required actions to address the matter.

Furthermore, in September 2023, the Saudi Data and Artificial Intelligence Authority (SDAIA) released the Regulations on Personal Data Transfer Outside the Kingdom.

The Regulations allow the transfer or disclosure of personal data to an entity outside the Kingdom, with the condition that it is restricted to the minimum extent necessary to achieve the intended goal. This transfer or disclosure must not compromise national security, the vital interests of the Kingdom, or violate any other laws within the Kingdom.



Regarding the Data Transfer Regulation, its provisions consistently anticipate various scenarios, providing clear courses of action for each possibility. This approach aims to enhance protection during data transfers, with a primary focus on prioritizing the security of the data involved.

The Data Transfer Regulation sets criteria for evaluating and assessing the level of personal data protection outside the Kingdom. These criteria encompass various factors, including the precedence of laws that guarantee the protection of personal data subjects' rights and the preservation of their privacy.

Findings are presented to the Prime Minister, reviewed every four years, or when needed, in respect of adaptability to digital evolution. To ensure that the regulation covers every possible scenario, guarantees for data transfer beyond the Kingdom are outlined in the regulations in cases excluding adequate level of protection.

Additionally, in cases where guarantees aren't feasible, Article 6 of the Regulation authorizes transfer exclusively in specific situations.

Even though the Regulation permits the transfer or disclosure of personal data outside the Kingdom under specific guarantees, in instances where these guarantees are not applicable, and the mentioned situations in article 6 are not applicable such transfers must promptly cease.

The controller is then required to re-evaluate the associated risks, particularly in cases where the transfer or disclosure process is deemed to affect national security or the vital interests of the Kingdom.

In addition, Article 8 of the Data Transfer Regulations requires the controller to assess risks linked to transferring data outside the Kingdom. The article specifies criteria for this assessment, covering measures to mitigate identified risks, along with outlining the purpose and legal justification for the transfer or disclosure process.

In conclusion, the Implementing Regulations for the Personal Data Protection Law establish a thorough and precise structure for safeguarding data in Saudi Arabia, eliminating any room for error and ambiguity. This progress and proactive approach instill heightened confidence in the security of laws, nurturing the growth and safety of communities. The precision and specificity in the regulation are evident through the detailed obligations imposed on the controller, who bears significant responsibilities while directly handling personal data. This level of detail serves to reassure the data subject, fostering a sense of protection and security.

In addition, the rights granted to the personal data subject, underscores the significance placed on safeguarding their rights, fostering a sense of security and protection ensured by the law.

Regarding the Data Transfer Regulation, its provisions consistently anticipate various scenarios, providing clear courses of action for each possibility. This approach aims to enhance protection during data transfers, with a primary focus on prioritizing the security of the data involved.

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The GDPR outlines seven principles that are crucial considerations development and implementation of effective data protection laws. The specified principles are as follows: Lawfulness, Fairness, and Transparency, Data Minimization, Purpose Limitation, Accuracy. Storage Limitation, Integrity Confidentiality Accountability. Furthermore, the GDPR has significantly influenced worldwide data protection standards, acting as a blueprint for numerous countries in the formulation or enhancement of their own data protection laws.

The Implementing Regulation of the Personal Data Protection Law incorporates concepts and requirements akin to those found in the GDPR. These include fundamental notions for example, both regulations outline

the procedures for maintaining records of personal data processing activities.

Additionally, both regulations emphasize the rights of the personal data subject, underscoring the right to be informed, access information and communication, the right to rectify/correct, as well as the right of destruction/erasure of personal data.

Regarding the distinction, the Implementing regulation of data protection law in KSA provides a more detailed outline of the controller's responsibilities compared to the GDPR, additionally, another notable difference is the timeframe given for controllers to respond to data subject rights.

In KSA's regulations, the response is required within 30 days and can be extended for a period not exceeding additional, while under the GDPR, this period can extend up to 3 months.

As highlighted earlier, the GDPR serves as an influential model for data protection laws, forming a foundation for various legislations worldwide. While we've discussed a few distinctions, there exist numerous points of convergence and divergence between the GDPR and the implementing regulations on personal data protection laws in KSA.

This reflects the progressive evolution of data protection laws in KSA, evident in the emphasis on clarity, security, community development, and the establishment of elevated standards within the realm of data protection laws.

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SUPREME COURT: EVEN IF MSME REGISTRATION IS TAKEN POST-CIRP INITIATION, PROMOTER ELIGIBLE TO SUBMIT RESOLUTION PLAN



The Supreme Court has held that the promoter of a corporate debtor is eligible to submit a resolution plan under Section 240A of the Insolvency and Bankruptcy Code (IBC), 2016, even if it was registered as a Micro Small Medium Enterprise (MSME) after commencement of the Corporate Insolvency Resolution Process (CIRP).

The bench comprising Justice Sanjay Kishan Kaul and Justice Sudhanshu Dhulia set aside an order passed by the National Company Law Appellate Tribunal (NCLAT), wherein the promoter of an MSME corporate debtor was declared ineligible to submit a plan on the premise that the MSME certificate was obtained post the CIRP commencement.

On 06 April 2021, Shree Aashraya Infra-Con Limited (corporate debtor) was admitted into CIRP under IBC, by the National Company Law Tribunal (NCLT). Subsequently, on 15 July 2021, the corporate debtor was registered as MSME. Hari Babu Thota (appellant) was appointed as the Resolution Professional (RP) of the corporate debtor.

Meanwhile, vide the amendment effective from 23 November 2017, Section 29A was inserted in IBC. The provision listed the persons ineligible to submit a resolution plan for the corporate debtor, including the promoters and related parties.

Later, with effect from 06 June 2018, Section 240A was inserted in IBC. It provided that the bar under Section 29A to submit a plan would not apply in the CIRP of MSME corporate debtor. Therefore, the promoter of an MSME corporate debtor was eligible to submit a resolution plan by availing the benefit of the exception under Section 240A.

Thus, benefitting from it, the corporate debtor submitted a resolution plan, which was approved by the Committee of Creditors (CoC). However, on 28 February 2023, the NCLT declined to approve the resolution plan since the MSME certificate was obtained after the CIRP commencement.

In an appeal, on 02 June 2023, the NCLAT upheld the order of the NCLT. It relied on its earlier judgment in the Digamber Anand Rao Pingle v Shrikant Madanlal Zawar & Ors., Comp. App. (AT) (Ins.) No.43-43A/2021 case. The tribunal held that when the MSME certificate was obtained post-CIRP commencement, the promoter could not avail the benefit of Section 240A to submit a plan for the corporate debtor.

Thus, the RP approached the top court against the NCLAT order.

The issue was whether the corporate debtor not having an MSME status at the time of CIRP commencement would disqualify the resolution applicant under Section 29A, as a benefit of Section 240A was not available.

The Apex Court noted that the objective behind introducing Section 29A was to cure the mischiefs of persons responsible for the financial situation of the company against trying to submit a plan and take over the company.

Sub-sections (c), (g), and (h) of Section 29A pertained to the ineligibility related to the promoter of the corporate debtor.

Section 29A(c) disqualified a person whose account was classified as a non-performing asset (NPA) and a year had lapsed from such classification till the CIRP date.

Section 29A(g) disqualified wherein preferential, undervalued, fraudulent, or extortionate transactions took place and the NCLT passed an order in that context

Section 29A(h) disqualified a person executing a guarantee in favor of a creditor of a corporate debtor, against which the creditor filed insolvency proceedings and the guarantee was invoked by the creditor and remained unpaid in full or partly.

Justice Kaul and Justice Dhulia observed that no bank dues were outstanding to term it an NPA. Also, only one preferential transaction was identified by the RP but the NCLT did not pass any order. The judges held that Section 29A(h) had no factual application in the present context. Thus, under Section 29A, the promoter of the corporate debtor was not disqualified per se to disentitle him from presenting the plan.

The bench stated that exempting MSMEs from the application of Section 29A was done due to the nature of business carried out by such entities.

The Court relied on the Insolvency Law Committee's Report 2018, wherein under the 'Exemption of Micro, Small and Medium Enterprises from Section 29-A' the matter was simplified.

The report stated, "Given that MSMEs are the bedrock of the Indian economy, and the intent is not to push

them into liquidation and affect the livelihood of the employees and workers, the Committee sought it fit to explicitly grant exemptions to the corporate debtors, which are MSMEs, by permitting a promoter who is not a wilful defaulter, to bid for the MSME in insolvency. The rationale for this relaxation is that a business of an MSME attracts interest primarily from a promoter of an MSME and may not be of interest to other resolution applicants."

The bench thus set aside the NCLT and NCLAT orders and held that even if the MSME registration was obtained post-commencement of CIRP, the promoter of the corporate debtor would be eligible to submit a resolution plan under Section 240-A of IBC. It restored the matter to NCLT for reconsideration.

SUPREME COURT ADVISES NCLT TO PROVIDE COGENT REASONS WHILE PASSING ORDERS NOT APPROVING RESOLUTION PLAN

The Supreme Court has held that when the National Company Law Tribunal (NCLT) exercises its powers under Section 31(2) of the Insolvency and Bankruptcy Code (IBC), 2016 to not approve a resolution plan, a reasoned order must be passed.

The bench comprising Justice Vikram Nath and Justice Ahsanuddin Amanullah set aside the NCLT order keeping the approval of a resolution plan in abeyance while directing an official liquidator to conduct the re-valuation of the corporate debtor's assets.

Consequently, the order of the National Company Law Appellate Tribunal (NCLAT) affirming the NCLT order was also set aside.

The Court cautioned that the NCLT may direct re-valuation of corporate debtor's assets, when necessary, but strictly within the domain permitted under the IBC.

The bench stated, "The adjudicating authority has the jurisdiction only under Section 31(2) of the IBC, which gives power not to approve only when the resolution plan does not meet the requirement laid down under Section 31(1) for which a reasoned order is required to be passed. The NCLT's jurisdiction and powers as the adjudicating authority under the Code flow only from the IBC and the regulations thereunder."



ACIL (corporate debtor) was admitted into the Corporate Insolvency Resolution Process (CIRP) under the IBC by the NCLT.

The Resolution Plan submitted by Ramkrishna Forgings Limited (successful resolution applicant/SRA) was approved by the Committee of Creditors (CoC) for the corporate debtor.

Accordingly, the Resolution Professional (RP) filed an application under Section 30(6) of the IBC before the NCLT, seeking approval of the resolution plan.

On 01 September 2021, the NCLT kept the approval of SRA's resolution plan in abeyance. It directed the Official Liquidator (OL) to provide exact figures/value of assets.

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The SRA filed an appeal before the NCLAT against the order. Vide the 19 January 2022 order, the NCLAT dismissed the appeal.

It observed that an avoidance transaction of approximately Rs.1000 crores had come to light. Since a large sum was involved, the case justified interference.

Thereafter, the SRA filed an appeal before the top Court against the NCLAT's 19 January 2022 order.

The SRA argued that IBC had an inbuilt mechanism for the valuation of assets of the corporate debtor provided under the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

Therefore, the appointment of an OL for valuation, which was otherwise a creation of the Companies Act, 2013, was unwarranted. Also, the NCLT could not sit in appeal over commercial decisions of the CoC.

However, the apex Court ruled that the NCLT could reject a resolution plan only through a reasoned order.

The bench held that Section 31(2) of the IBC alone empowered the NCLT to reject a resolution plan when the same did not meet the requirements given under Section 31(1) of the IBC.

For rejecting a resolution plan, the tribunal must pass a reasoned order and the power was exercisable only within the ambit of IBC and its provisions.

The judges stated that it ought to be noted that the adjudicating authority had jurisdiction only under Section 31(2), which gave power not to approve only when the resolution plan did not meet the requirement laid down under Section 31(1) for which a reasoned order was required to be passed.

They emphasized that the NCLT's jurisdiction and powers as the adjudicating authority under the Code came only from the Code and the regulations therein.

Justice Nath and Justice Amanullah explained that they would have refrained from interfering in the NCLT order if it was reasonable. The bench stressed that it was the duty of the Courts and the tribunals to record the cogent reasons.

The Court further expressed, "There may have been a situation where due to glaring facts, an order of the nature impugned herein could be left untouched and this Court would have refrained from interference, but only if detailed reasoning, disclosing the facts for being persuaded to embark on such path, were discernible in the order dated 01.09.2021, which unfortunately is cryptic and bereft of detail.

Recording of reasons and not just reasons but cogent reasons, for orders is a duty of the Courts and the tribunals."

The bench relied on the judgments passed in the Kranti Associates Private Limited vs Masood Ahmed Khan, (2010) 9 SCC 496 case and the Manoj Kumar Khokhar v State of Rajasthan, (2022) 3 SCC 501 case.

It held that a Court or a quasi-judicial authority had a duty to record the reasons for its decision. It further said, "The reason is the heartbeat of every conclusion. Without the same, it becomes lifeless." The NCLT could direct the re-valuation of assets strictly within the domain permitted under the IBC.

One of the counsels had raised concerns that the power to direct the re-valuation of assets should not be excluded from the powers of the NCLT. Thus, explaining the scenario, the bench stated that the NCLT might exercise such power when necessary but strictly within the domain permitted by the IBC.

The Top Court ruled, Regarding the counsel's submission that this Court may not exclude from the NCLT's ambit any power to direct re-valuation, we have given our anxious thought to it. Our view is that while certainty in law and legal principles is the obvious aim, the law is to be applied in the context of the facts.

If a matter where the facts are stark comes to light, the same would have to necessarily be dealt with by the NCLT within the four corners of the Code itself, having due regard to the extant circumstances.

The judges added, "It is for the NCLT to exercise the power strictly within the domain permitted by the Code. In this context, one may peruse the decisions in the Embassy Property Developments Private Limited vs State of Karnataka, (2020) 13 SCC 308 case, and the Gujarat Urja Vikas Nigam Limited vs Amit Gupta, (2021) 7 SCC 209 case."

Thus, the bench set aside the orders passed by the NCLT and the NCLAT. It directed the NCLT to pass appropriate orders in the application for the approval of the resolution plan.

SUPREME COURT ORDERS GREATER ASHOKA AND LAND DEVELOPMENT CO TO PAY RS.50 LAKHS TO SETTLE 60-YEAR-OLD LAND DISPUTE



The Supreme Court has ordered Greater Ashoka and Land Development Company to pay Rs.50 lakhs to settle a 60-year land dispute with an allottee of a plot.

The Division Bench of Justice Vikram Nath and Justice Rajesh Bindal observed that merely refunding the earnest money paid decades ago would be unreasonable, considering the significant land price appreciation over time.

The suit was filed by the predecessor-in-interest of the respondents seeking specific performance of a contract.

While the trial Court decreed the suit, the lower appellate Court reversed the judgment. It directed the execution of the sale deed and granted the relief of refunding the earnest money along with interest.

However, the Punjab and Haryana High Court upheld the judgment and decree of the trial Court and set aside the judgment of the appellate Court.

The counsel for the appellant contended that the approved layout plan for Ashoka Enclave Extension, Part-III, Faridabad, was in 1961. The respondent provisionally booked a plot but failed to meet the subsequent payment schedules.

The zone was, thus, designated a controlled area under the Punjab Scheduled Roads and Controlled Areas Restriction of Unregulated Development Act, 1963. This necessitated the appellant to obtain relevant permissions.

Subsequently, permissions under the 1963 Act and later the Haryana Restriction of Development and Regulation of Colonies Act, 1971, were obtained.

The respondent sought a refund of the earnest money and interest accrued on it. However, facing complications, the appellant offered a new plot at a revised rate, which the respondent refused to accept.

After issuing a legal notice, the respondent remained silent for a long period. Though, he later filed a civil suit seeking specific performance or a refund with interest.

The appellant argued agreement frustration due to developments. He insisted it was the respondent's failure to accept the offered plot within the stipulated time, which led to the forfeiture of the earnest money. He expressed willingness to refund the earnest money with interest, even at a higher rate.

The Top Court observed that the allotment of the plot was made in 1963. Despite certain developments and permissions required by the appellant for the development of the land as a colony, the details and specifics were not adequately furnished to the respondent. The plot was offered to the respondent at a higher rate than the initial allotment rate.

The bench noted that the respondent actively sought information and requested the appellant to supply the layout plan. However, he did not receive any response.

The judges stated that the civil suit for specific performance was filed within the period of limitation.

They added that merely refunding the earnest money, paid after 60 years, was unreasonable since the price of the land in the area had increased manifold.

Thus, while disposing of the appeals, the Apex Court modified the impugned judgment and decree of the High Court. It ruled that instead of getting the sale deed of the plot registered at the initial allotment rate, the appellant must pay Rs.50,00,000 to the respondent as a full and final settlement of the claim.

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SUPREME COURT EXPANDS ARBITRATION SCOPE: CANCELLATION OF DEEDS IS ACTION "IN PERSONAM", NOT "IN REM"



The Supreme Court upheld that the arbitrability of a property dispute is based on the broad scope of the Tripartite Agreements' arbitration clause. The Court dismissed the argument that cancellation of a deed, an "action in rem," cannot be arbitrated, instead classifying it as an "action in personam" and therefore suitable for arbitration. Observing the foundational role of the Tripartite Agreements, the Court acknowledged their influence on all subsequent agreements, encompassing the ones underlying the current dispute.

Although the Conveyance Deed and Development Agreements, at the heart of the dispute, lacked an arbitration clause, their origin in the Tripartite Agreements, featuring a comprehensive arbitration clause, supported the lower court's decision to refer the matter to arbitration.

In a unanimous decision, Justices Aniruddha Bose and Sudhanshu Dhulia endorsed the reference of this property dispute to arbitration. Their ruling affirmed the earlier decisions of the Trial Court and the High Court, which found that the broad language of the arbitration clauses in the two Tripartite Agreements (2007 & 2008) encompassed the appellants' present claims raised before the Civil Court. In a civil suit, the present appellants, acting as plaintiffs, sought a court declaration annulling a Conveyance Deed and terminating registered Development Agreements.

But the defendants (now respondents) invoked Section 8 of the Arbitration Act, citing the Tripartite Agreements' clause to argue the dispute must be arbitrated. They claimed these agreements underpinned the challenged Deed and Development Agreements.

Granting the defendants' Section 8 application, the trial court and subsequently the Bombay High Court upheld

arbitration, prompting the appellants' appeal to the Supreme Court.

To understand the Supreme Court's reasoning, it is pertinent to first examine the crucial arbitration clause contained in the Tripartite Agreements. This clause states that "any disputes or differences between the Parties hereto in relation to this Agreement or in relation to any matter touching or arising from this Agreement, the parties shall refer such disputes and differences to the arbitration under the provisions of the Arbitration & Conciliation Act, 1996 or any statutory modification thereof."

Underlining the limited judicial involvement in arbitration matters, the Court delved into the 2015 amendments of the Act, which reinforce this restricted role. To curb judicial interference in arbitration, the 2015 amendments to Sections 8 and 11 narrowed the court's role in verifying the existence of a valid arbitration agreement.

Relying on the foundational nature of the Tripartite Agreements and the expansive scope of their arbitration clause, the Court justified the referral to arbitration as the appropriate course of action in this case.

Rejecting the appellants' argument that the civil suit was non-arbitrable, the Court relied on established precedents like Booz Allen and VidyaDrolia. Examining the present case in light of these precedents, the Court concluded that the dispute did not fall into any of the categories deemed non-arbitrable in the cited cases.

The Court further considered the appellants' contention that the dispute constituted an "action in rem," rendering arbitration unsuitable. Responding to this argument, the Court relied on the precedent established in Deccan Paper Mills (2021). In that case, the Court had already determined that suits seeking cancellation of deeds or declarations concerning them, regardless of their specifics, are considered "actions in personam" and therefore fall within the purview of arbitration.

Dismissing the unsubstantiated fraud claim, the Court reiterated its stance that arbitration cannot be avoided by mere "bald allegations," only serious fraud allegations can challenge arbitral jurisdiction.

Finding no reason to overturn the lower courts' rulings, the Court upheld the arbitration referral and dismissed the appeal.

SUPREME COURT RULES STATE ELECTRICITY REGULATORY COMMISSION HAS POWERS TO OUESTION MARKET-ALIGNED TARIFF

The Supreme Court has allowed the appeals of Jaipur Vidyut Vitran Nigam involving the procurement of 1000 MW of power by a competitive bidding process.

The Division Bench comprising Justice B.R. Gavai and Justice Prashant Kumar Mishra ruled that the Appellate Tribunal for Electricity (APTEL) grossly erred in holding that the state electricity regulatory commission had no power to question whether the prices quoted were market-aligned. The appeal was filed in the matter considering that the Government of India notified the Competitive Bidding Guidelines under Section 63 of the Electricity Act, 2003.

In 2012, Rajasthan Vidyut Prasaran Nigam (RVPN) issued an RFP, inviting sellers to participate in the competitive bidding for the procurement of 1000 MW under the Bidding Guidelines. Thereafter, in consonance with the Lol, PPAs were signed with the L-1, L-2, and L-3 bidders (PTC India Ltd through developer Maruti Clean Coal and Power Limited; PTC India Ltd (through DB Power Limited), and Lanco Power Limited (generation source Lanco Babandh Power Limited).

Thereafter, RVPN filed a petition before the State Commission under Section 63 read with clause 5.16 of the Bidding Guidelines for the adoption of the tariff for the purchase of long-term base-load power of 1000 MW (±10%). It was quoted by the successful bidders (L-1, L-2, L-3) under the Case-I bidding process.

Later, L-4 and L-5 bidders filed writ petitions, seeking to strike down the negotiation process and the higher quantum awarded to L-1, L-2, and L-3 bidders.

The State Commission held that the quantum of only 500 MW power was liable to be approved considering the demand in the State as recommended by the Energy Attributes Certificates (EAC). The State Commission also approved the tariff quoted by the L-1 to L-3 bidders. Aggrieved by the reduction of quantum by the State Commission, the L-2 and L-3 bidders appealed before the tribunal for APTEL.

On an interlocutory application being filed by the L-5 bidder, SKS Power, an interim order was passed holding that the L-5 bidder was entitled to supply power to the appellants at the tariff of Rs.2.88 per unit.

Subsequently, a writ petition was filed by respondent No.1-MB Power. The appeals filed in the Apex Court challenged the judgment passed by the division bench of the Jaipur branch of the Rajasthan High Court. The writ petition was filed by MB Power-respondent No.1



The High Court held that respondents No.1 to 5 (appellants and the State of Rajasthan) were bound to purchase a total of 906 MW of electricity from the successful bidders. Referring to Clause 5.15 of the Bidding Guidelines, the Apex Court observed that the State Commission was justified in considering clause 5.15 of the Bidding Guidelines, which specifically permitted to rejecting all price bids if the rates quoted did not align with the market prices prevailing.

The bench held that Section 86(1)(b) of the Electricity Act gave ample power to the State Commission to regulate the electricity purchase and procurement process of distribution licensees. It also empowered the Commission to regulate matters including the price at which electricity would be procured from the generating companies. The Court rejected the contention that it had ordered that the bids quoted by the bidders were to be accepted without going into the question of it being market-aligned or not.

The Judges stated, "APTEL has grossly erred in holding that the State Commission has no power to go into the question, as to whether the prices quoted are market aligned or not and also not to take into consideration the aspect of consumers' interest."

The bench explained that when the Bidding Guidelines permitted the BEC to reject all price bids if the rates did not align with the prevailing market price, the State Commission had ample powers under Section 86(1)(b) of the Electricity Act. It included the power to regulate the prices. Thus, the finding of the APTEL was erroneous.

The Court also noted that from the Court orders, it could not be read that the Commission was bound to accept the bids as quoted by the bidders till the bucket was filled.

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It stated, "No such direction can be issued by this Court de hors the provisions of Section 63 and 86(1)(b) of the Electricity Act and the Bidding Guidelines."

It clarified that while applying the principle of literal interpretation, the evaluation committee/BEC would be entitled to reject the price bids if it found that the rates quoted by the bidders did not align with the prevailing market prices. It did not stipulate the rejection of all the bids in the bidding process. Regarding the provision, the bench held that an interpretation, which advanced the purpose of the Act and ensured its smooth and harmonious working, must be chosen. If it led to absurdity, confusion, friction, contradiction, conflict, undermined, or tended to defeat, or destroy the basic scheme and purpose of the enactment, it must be eschewed

The Top Court observed that the High Court erred in directly entertaining the writ petition when respondent No.1 - the writ petitioner before the High Court, had an adequate alternate remedy of approaching the State Electricity Commission. The bench observed that the decision-making process, as adopted by the BEC, was totally in conformity with the principles laid down by the Supreme Court time to time.

Thereafter, considering the competitive rates offered in the bidding process in various States, the BEC concluded that the rates quoted by SKS Power (L-5 bidder) were not market-aligned. The decision had been approved by the State Commission. Since the decision-making process adopted was in accordance with the law laid down by the Apex Court, it should not have been interfered with by the APTEL.

The bench held, "The High Court, by the impugned judgment and the order, could not have issued a mandamus to the instrumentalities of the State to enter a contract, which was totally harmful to the public interest. If electricity is to be procured by the procurers at the rates quoted by respondent No.1-MB Power, which is even higher than the rates quoted by SKS Power (L-5 bidder), the State would have been required to bear the financial burden in thousands of crores of rupees, which would have, in turn, been passed on to the consumers."

Thus, the Top Court quashed the impugned judgment of the High Court. While allowing the appeals, the bench directed respondent No.1-MB Power to pay the costs to the appellants quantified at Rs.5 lakh in each case.

SUPREME COURT: TAXPAYER ENTITLED TO HEARING ON MERIT IF HIGH COURT DISMISSES APPEALS FOR DELAY IN FILING PAPER-BOOK



The Supreme Court, while setting aside the Rajasthan High Court orders, has restored the assessee's appeals by condoning the delay in filing the paper-book before the High Court. It observed that the assessee was entitled to his appeals being heard on a merit basis. The division bench comprising Justice P.S. Narasimha and Justice Aravind Kumar held, "As appeal No.817 of 2008 stood dismissed for non-compliance, the High Court believed inconsistent orders cannot be passed and proceeded to dismiss even appeal No.816 without examining the matter on merits. We are of the opinion that the appellant is entitled to have his appeals heard on merits." For the

Assessment Year 2001-2002, the assessment officer (AO) passed an order disallowing the interest, which was confirmed by the Commissioner of Income Tax (Appeals) and the Income Tax Appellate Tribunal (ITAT). On an appeal, the High Court directed the assessee to file the paper book within 15 days, failing which, the appeal was to be dismissed without reference to the Court. Since the paper book was not filed within the prescribed time, the registrar dismissed the appeal. Thereafter, the Court dismissed the application for restoration of appeal and the review against the order.

The bench observed that the appeal was dismissed for non-filing of the paper book within the prescribed time. Since the inconsistent order could not be passed for the AY 2002-2003, it dismissed the appeal without examining the matter on merits. The bench stated that the High Court would have condoned the delay for the AY 2001-2002 if had taken up the matter along with the AY 2002-2003.

Thus, the Apex Court allowed the appeal of the assessee and directed the High Court to take up the appeals for both assessment years together. However, the parties needed to be provided with an opportunity for proper adjudication and determination on a merit basis.

SUPREME COURT NOTES TRADE DRESS OF LONDON PRIDE' SAME AS 'IMPERIAL BLUE' IN WHISKEY BRANDS DISPUTE



In a trademark dispute involving whiskey brands 'Blenders Pride', 'Imperial Blue', and 'London Pride', the Supreme Court has pointed out that 'pride' was a generic word. It asked if an infringement claim could be made over the use of the term.

The bench comprising Chief Justice of India DY Chandrachud, Justice JB Pardiwala, and Justice Manoj Misra was hearing a Special Leave Petition (SLP) filed by Pernod Ricard India Pvt Ltd, the Indian subsidiary of an international liquor manufacturer.

Pernod had challenged the refusal of the Madhya Pradesh High Court to grant an injunction against the alleged infringement of the trademarks of whiskey brands 'Blenders Pride' and 'Imperial Blue'.

Pernod stated that 'London Pride' was infringing the tradename 'Blenders' Pride' and copying the trade dress (bottle design, writing style, and color combination) of 'Imperial Blue', and embossing the logo of 'Seagram' (another product of Pernod).

During the hearing, the bench pointed out that 'pride' was a generic word. It asked if an infringement claim could be made over the use of the term.

Appearing for Pernod, senior advocates Mukul Rohatgi and Dr Abhishek Manu Singhvi submitted that a trademark could be claimed over a combination of words and the court had to see its effect and the tendency to confuse a potential customer.

Rohatgi referred to the Supreme Court judgment in the Amrit Dharavs Lakshman Dhara case. He stated that although the pre-fix words were different, the apex court had ruled that the structure of the combination was to be seen. It is considered an imperfect recollection by a consumer.

The CJI countered if a person wanting to buy 'Blenders Pride' would, by mistake, buy 'London Pride'.

When Rohatgi stated, "Suppose, he says (give me) Pride," appearing for the respondent, senior advocate Dr S Muralidhar interjected, "No discerning buyer of drinks is going to ask for 'pride."

Muralidhar pointed out that while a bottle of Blender's Pride cost Rs.1650, London Pride was worth Rs.650. Thus, there existed a difference in the kind of buyers for the two products.

He added, "For someone who buys Blenders Pride will never go and buy London Pride... much more expensive than ours."

The bench was informed that 'pride' was a common term used in several liquor brands. Hence, the petitioner could not claim a monopoly over it.

However, the petitioner argued that the term 'London Pride' was created and was not a naturally occurring word. It referred to a judgment of Justice Chandrachud (as judge of the Bombay High Court) in the Gorbatschow Wodka Kg vs. John Distilleries Limited 2011 SCC OnLineBom 557 case.

The petitioner submitted that the "affluent was never discerning" and what was tested was the suffix. The petitioner's product was launched much before the respondent's product and was already well-known.

On the issue of trade dress and Seagram, and get-up of 'Imperial Blue', the bench noted a direct copy of the trade dress and bottle style by 'London Pride'.

Thus, the CJI asked Dr Muralidhar, "Why do you adopt the same trade dress, same blue color, etc? You use the same trade dress virtually. Change the trade dress."

The bench directed the counsel to take instructions from his client on a possible agreement to change the label.

The judges further queried, "You can enter consent terms that you will change the trade dress. Second, you should not use any bottle with the logo of the Seagram... you make a statement on record that you will not use the Seagram embossed on the bottle... Dr Murlidhar, you have to ask yourselves, why do you suddenly choose 'Pride'?"

The senior counsel agreed to get instructions from his client on the aspects.

HIGH COURT & TRIBUNAL NEWS AROUND THE NATION



BOMBAY HIGH COURT

BOMBAY HIGH COURT: UNDER SECTION 37 OF A&C ACT, COURT CANNOT ACCEPT INDEPENDENT ASSESSMENT OF ARBITRAL AWARD



The Bombay High Court has held that under Section 37 of the Arbitration and Conciliation (A&C) Act, 1996, the challenge must be related to the impugned order passed under Section 34 and not merely to the arbitral award.

The bench of Chief Justice Devendra Kumar Upadhyaya and Justice Arif S Doctorstated that it was incumbent upon a party to point out errors in the order under Section 34 to make out a case in the appeal under Section 37.

It added that while exercising powers under Section 37 of the A&C Act, the court could not take an independent assessment of the arbitral award. Therefore, the challenge must be premised on the errors in the impugned order under Section 34. It was not permissible for a party to challenge an arbitral award de hors any challenge to the impugned order.

The case pertained to the appellant, a marine salvage company, and the respondent, involved in offshore logistics and dredging. They entered a Salvage Agreement in 2019 October-November for the recovery of the dredging vessel 'Sical Portofino.' The agreement operated based on 'no cure no pay.'

However, issues arose when the respondent, despite an initial payment, did not provide the required security as outlined in the contract. Despite the appellant's reminders, the security was not furnished, leading to the termination of the contract in December 2009. However, the respondent provided the necessary security after subsequent communication.

After completion of the work, the appellant issued an invoice for salvage charges, which was duly paid. In January 2010, the appellant sent an invoice to the respondent for idle-time charges during a specific period in November-December 2009.

Thereafter, disputes arose, leading to the filing of an admiralty suit, subsequently referred to arbitration.

The arbitral tribunal addressed various issues, including claims, jurisdiction, waiver, and the interpretation of the contract terms. In its 18 April 2015 award, the tribunal dismissed both the appellant's claim and the respondent's counter-claim.

The appellant challenged the award under Section 34 of the Arbitration Act. However, it was dismissed in the impugned order. Aggrieved by it, the appellant filed the appeal under Section 37.

The appellant made the submissions:

- The tribunal erred in applying Section 55 of the Indian Contract Act (ICA) when the parties expressly agreed that the Section would not apply. In the respondent's pleading, it was asserted that the time was not the essence of the contract; therefore, it was admitted that Section 55 of the ICA could not be applied.
- The tribunal went beyond the pleading of the respondent by making a finding that by agreeing to continue the contract, the appellant waived its right to claim compensation. However, there was no such finding.
- The tribunal erred in rejecting the claim of the appellant merely on the grounds of lack of computation despite observing that the claim was alive.
- The tribunal also erred in not appreciating that the claimed amount was a genuine pre-estimate of the loss provided under the agreement, which required no quantification.

The court observed that the appellant's challenge focused solely on the arbitral award and did not address the impugned order. It held that under Section 37 of the A&C Act, the challenge must be

related to the impugned order passed under Section 34, and not merely to the arbitral award. It was incumbent on the party to point out errors in the order under Section 34 to be able to appeal under Section 37.

The judges emphasized the narrow scope of such appeals, especially when dealing with orders refusing to set aside an arbitral award. They acknowledged the tribunal's proper constitution under the contract, with members possessing the requisite knowledge of maritime matters. Thus, under Section 34 of the Arbitration Act, the dismissal of the appellant's petition was affirmed.

The bench rejected the contentions regarding the inapplicability of Section 55 of the Contract Act, waiver, and inconsistent findings. While citing the judgment of the Supreme Court in a previous case, it noted the inapplicability that the respondent had pleaded waiver in the Statement of Defence.

The court also found the rejection of liquidated damages justified, as it was based on the substantive issue of entitlement to idle time charges rather than a mere computation error.

Thus, finding no infirmity in the impugned order, the appeal was dismissed.

TAX CANNOT BE IMPOSED PRESUMING SMALL CAUSES COURT'S POSSIBLE ORDER: BOMBAY HIGH COURT

The Bombay High Court has held that an amount cannot be taxed that has not accrued to the assessee and has not been received by the assessee on the presumption that the Small Causes Court (SCC) would order the sum in favor of the appellant-assessee in future.

The bench of Justice GS Kulkarni and Justice Jitendra Jain observed that the determination of the amount payable by the IDBI to the appellant as prayed for by the appellant in its suit was to be determined by the SCC. Only after the court passed a final decree it could be said that the right to receive the sum decreed accrued to the appellant. Until then, the right to receive any sum by the appellant was in jeopardy and sub-judice before the SCC.

The appellant/assessee is the leaseholder of Neville Wadia Pvt. Ltd., which entered an agreement with Bombay Builders to construct a building at Cumballa Hill in Mumbai and sell 30 flats to the appellant at an agreed price.

On 22 April 1980, by a tripartite agreement, Bombay Builders, as the confirming party, was substituted with IDBI as the sub-lessee, and the appellant sub-leased the property on an annual lease rent of Rs.3,42,720 to IDBI.

The appellant received the rent and offered Rs.3,42,720 as lease rent in its Income Tax Return (ITR) for the Assessment Year 1981–1982. The income was offered for tax under 'Income from Other Sources'.

The dispute between the appellant and the IDBI arose from various breaches allegedly committed by the IDBI. It led to the appellant terminating the sub-lease



agreement and refusing to accept the rent from IDBI.

In 1981, IDBI filed a declaratory suit in the SCC and obtained an injunction against the appellant for terminating the sub-lease agreement.

The department issued a garnishee notice to IDBI under Section 226(3) of the Income Tax Act, 1961 for the appellant's outstanding tax arrears. It directed the IDBI to pay the rent to the Income Tax Department.

The appellant informed the department that since the sub-lease agreement was terminated, no rent was due and payable by IDBI to the appellant. Therefore, the garnishee proceedings were illegal.

The IDBI was also sent a copy of the letter. The appellant reiterated the termination while recording that IDBI should not make the payment to the IT department under the garnishee notice. However, IDBI still deposited the amount with the department.

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In 1984, the appellant filed a suit for eviction against the IDBI and claimed various reliefs, including compensation for the occupation of the flats and their wrongful use.

An assessment order under Section 143 read with Section 148 for the Assessment Year 1986–1987 was passed. The rent on account of the sub-lease agreement of the appellant with the IDBI amounting to Rs.3,42,720 was added as the appellant's income.

The appellant contended that it had terminated the sub-lease agreement with the IDBI in 1981 and filed an eviction suit before the SCC. The IDBI had also filed a suit to restrain the appellant from terminating the agreement and dispossessing it. Both the cross-suits were still pending adjudication by the SCC. Thus, no

accrual income arose under the sub-lease agreement between the entities.

On the other hand, the IT department contended that whether the suit pending before the SCC was allowed in favor or against the appellant, the SCC would at least order IDBI to pay Rs.3,42,720 per annum towards the use and occupation of the property of the appellant since it was in IDBI's possession.

The judges noted that the IT department was wrong that irrespective of the fate of the civil suits, the SCC would never order less than Rs.3,42,720 to the appellant, and, therefore, accrued the ascertained sum.

The bench held, "This would amount to pre-empting the decision to be rendered by the Small Causes Court in the cross-suits filed by the appellant and the IDBI."

BOMBAY HIGH COURT UPHOLDS VALIDITY OF AMENDMENT TO FINANCE ACT; REJECTS SERUM INSTITUTE'S PLEA



The Bombay High Court has rejected a petition filed by the vaccine manufacturer Serum Institute of India, challenging the amendments introduced in 2015 to the Finance Act. The Act inserted sub-clause (xviii) to Section 2(24), which defines taxable income.

In the Serum Institute of India Private Limited vs. Union of India &Ors case, a Division Bench of Justice KR Shriram and Justice Neela Gokhale upheld the validity of the amendment while advising, "The economic policy matters should be best left to the wisdom of the legislature. In the context of a changed economic scenario, the expertise of the people dealing with the subject should not be interfered with. While dealing with economic legislation, the court would interfere only in those few cases where the view reflected in the legislation is not possible to be taken at all. The

case of the petitioner certainly does not fall within this exception."

The amended provision that came into effect in 2016, stated that subsidies, grants, incentives, waivers, concessions, reimbursements etc. provided by the Central or the state governments would be included within the taxable income of an assessee.

Thus, while dismissing the plea of the SII, the bench stated, "We are unable to find or even assume that what the legislature has done for inserting the impugned sub-clause is irrational. There is no room for any doubt. There is nothing to even question the constitutionality. The petitioner has not been able to demonstrate a clear transgression of the constitutional principles."

Earlier, the Serum Institute had applied to avail incentives under the 'Package Scheme of Incentives of 2013' issued by the State of Maharashtra. It included stamp duty concessions and exemption from electricity duty, Value Added Tax (VAT), Central Sales Tax (CST), and the State and Goods Services Tax (SGST) subsidy.

After the Finance Act was amended to include such incentives within the fold of the taxable income, Serum Institute challenged the amendment on the ground that the sub-clause (xviii) to Section (24) had an unintended retrospective application. It stated that the provision did not exist when the Maharashtra government's 2013 scheme was introduced.

The vaccine manufacturer argued that by taxing the incentives, the Central government was indirectly taxing

the revenue of the state, which was impermissible under the Constitution of India. It added that under the amended Act, all incentives, given in whichever form or for whatever purpose by the government, were to be treated as income irrespective of whether it was a capital or a revenue receipt.

It pointed out that earlier the capital receipts were not taxable. Capital subsidy was non-taxable by various courts, including the Supreme Court. The taxation of capital receipts was also constitutionally impermissible.

On the other hand, the Central Government countered that the Parliament possessed exclusive powers to make laws concerning any matters enumerated in List 1 of the Seventh Schedule of the Indian Constitution, including laws to tax income.

It urged the court to refer to the legislative judgment in matters relating to social and economic policies and it must not interfere unless the exercise of the legislative judgment was arbitrary. While finding reason in the Central Government's arguments, the judges dismissed the Serum Institute's challenge.

The bench held, "The judiciary's role is limited to ensuring conformity with the Constitution without delving into the policy merits. Overturning fiscal statutes could lead to economic chaos and undermine the authority of the legislative body. Therefore, the courts must balance the necessity to uphold constitutional mandates with the practical implications of interfering with legislative judgments in fiscal matters. The courts have the power to destroy, not to reconstruct."

Senior Advocate Arvind Datar with Advocates Chinmoy Khadalkar, Salonee Paranjape, PC Tripathi, and Atul K Jasani appeared for the Serum Institute.

The Central government was represented by Additional Solicitor General Devang Vyas and Advocates Suresh Kumar, Anusha Amin, Sheelang Shah, Vaibhavi Choudhary, and Mohini Choughule.

DELHI HIGH COURT

DELHI HIGH COURT: ENTITY'S SUSPENSION CANNOT BE CONTINUED INDEFINITELY; INVESTIGATION OF EX-DIRECTOR NOT ATTRIBUTABLE TO THE COMPANY

The Delhi High Court has held that no suspension can continue indefinitely without a show-cause notice, especially because even at the time of review, the principles of natural justice must be fulfilled.

The division bench of Justice Yogesh Khanna and Justice Tushar Rao Gedela were ruling on the suspension of business dealings with Defsys Solutions Private Limited by the Central government.

The court noted that despite being a leading defense equipment manufacturer with which the government was involved in other contracts, Defsys was suspended without adhering to the principles of natural justice, purportedly because its ex-director was involved in the AgustaWestland VVIP helicopter case.

Since the investigation was pending concerning parties unrelated to Defsys and no result was expected soon, the government was directed to comply with the impugned order of the single-judge bench under new timelines. Failure to do so would result in automatic revocation of the suspension order after a month.



The appeals were filed against the order of a single-judge bench passed in September 2023.

The single-judge bench had held that Defsys' suspension was "not within the spirit of fairness, impartial, rigor, and correctness" as contemplated in the Ministry of Defence Guidelines, 2016. However, it did not quash the suspension order, and instead, the government was directed to issue a show-cause

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notice and dispose of the matter after granting a hearing.

Defsys had pleaded that while directing the issuance of a fresh show-cause notice, the single-judge should have revoked the suspension order. It stated there was non-compliance with the principles of natural justice by the government, since until now, the suspension order was not served.

It pointed out that even the FIR was pending for the last 10 years, and the government was still doing business with AgustaWestland, the main accused, which was no longer under suspension.

On the other hand, the government contended that the judge had directed it to pass a reasoned order. A suspension could be indefinite, and issuance of a show-cause notice would be futile, as the defence ministry did not apply its mind to an entity's reply, as it would disclose the case of the investigating agency.

Based on Clause D.2 of the MoD Guidelines, the government averred that the merits of an investigation were not required once intimation was received by the authority regarding the initiation of criminal inquiry against an entity.

However, since the suspension of the prime accused-AgustaWestland was lifted before Defysys' suspension, the bench observed, "There appears to be no cause whatsoever to first connect the appellant to Augusta Westland and then seek to suspend the appellant on the basis of the Augusta Westland case after its suspension has been revoked."

The judges stated that after the issuance of the suspension order, Defsys was issued two notices. In both, it had not been accused. The only information sought by the Central Bureau of Investigation (CBI) was regarding the names of Defsys' directors and shareholders, and foreign remittances received by them.

Hence, it disregarded the government's reliance on Clause D.2 of the MoD Guidelines, which empowers an authority to suspend business dealings with an entity when intimation is received regarding an inquiry against it.

The court said, "Defsys, the 'entity', is not under an 'ongoing investigation' by the CBI at the time of the issuance of the suspension order. Any investigation of an ex-director cannot attribute to the company by itself."

On the government's contention that the issuance of a show-cause notice would be futile as the MoD could not exercise application of the mind, the court ruled, "The contention of the MOD results in making it just a postman upon a mere intimation of the CBI. The respondent MOD is obliged to suspend a party without applying its mind or without even allowing the principle of natural justice to play. It is incongruent because a party that is wholly innocent and not even accused by the CBI can be punished by the MOD ad infinitum, merely because the CBI at some point in time had intimated the MOD."

Referring to Clause D.1 of MoD Guidelines, which prescribes that 'full proceedings' must be initiated by the competent authority before the suspension is attempted under C.1 (a) - (f), the court added that the word 'proceeding' inhered a show-cause notice; reply to the show-cause notice, and, then, if required, an order of suspension.

On the government's reasoning that the power to suspend was unconditional, the judges held, "This contention is patently wrong. The power to suspend under Clause D.2 does not lead to banning under Clause F.. The suspension period must relate to banning, otherwise, it is causeless. Neither of the Clauses F.1 to F.3 refer to Clause D as a cause for banning. An intimation by the CBI of a pending investigation is not a cause for banning, only a charge sheet is. There is neither a charge sheet nor any other cause mentioned in Clause C.1."

Earlier, the single-judge bench had observed, "If the show cause notice is not to be given, proper reasons ought to be recorded for justifying the same that national security concern exists, and review would be conducted by the committee to determine as to whether the grounds in Clauses 1(a) to (f) are made out."

Justice Khanna and Justice Gedela stated that they found no infirmity in the impugned order. They ruled that the order of the single judge aligned with the preamble of MoD Guidelines, which the MoD violated.

The court noted that Defsys was a Micro, Small, and Medium Enterprise (MSME) supporting over 200 families of highly skilled engineers. It stated on oath that it never supplied/purchased anything from AgustaWestland. Besides, all its exports were being regulated by the government.

While observing that the one-year suspension was nearing completion and was set for review, the bench ordered compliance with the order of the single judge. However, it was subject to alterations in the timelines. The judges explained that the order was being passed due to peculiar facts of the case and a precedent could not be set.

DELHI HIGH COURT: TECHNICAL DEFICIENCIES DO NOT RENDER SECTION 34 OFA&C ACT NON-EST

The Delhi High Court has held that technical deficiencies, including pagination and affidavit attestation, do not invalidate petitions under Section 34 of the Arbitration and Conciliation (A&C) Act,1996.

Justice Manoj Kumar Ohri held that every objection in the filing would not render a petition non-est and it was only the defects that went to the root of the matter that would make the filing non-est. The petitioner contested an arbitral award issued on 15 March 2019 and filed the petition on 10 July 2019. The initial filing on 29 June 2019 faced issues, as it was deemed non est due to procedural errors. Thus, instead of following the appropriate format, a company petition was erroneously filed, rendering the first attempt ineffective.

Subsequently, on 10 July 2019, the petitioner refiled the petition, encountering objections from the Registry, including pagination concerns, jurisdictional matters, and the attestation of affidavits. The petitioner addressed the objections during the subsequent clearance attempts on 30 July 2019, 01 August 2019, and 02 August 2019. The respondent contended that the filing on 10 July 2019 was time-barred, nonest, and the defects were noncurable.

On the other hand, the petitioner counteredthat the defects were procedural and curable, promptly addressing the objections raised by the Registry.

The objections of the Registryencompassed issues including incomplete pagination, concerns about pecuniary jurisdiction, andattestation of affidavits. The respondent argued that the objections, if not rectified within seven days, should result in the petitioner being



non-suited. The Court examined the objections raised by the Registry. It distinguished between the defects that strike at the root of the filing's validity and those that were curable through rectification.

The bench, while emphasizing the intelligibility of the filing, referred to the earlier cases, underscoring the importance of meeting the basic requirements for an application under Section 34 of the A&C Act. It deemed the Registry's objections procedural and curable, and the non-removal within seven days did not render the subsequent re-filing as non est.

Thus, while exercising its discretion under Section 34(3) of the A&C Act, the judges considered the petitioner's satisfactory explanation. It considered the factors contributing to the delay, including procedural objections and the closure of the Registry during summer vacations.

INCOME TAX APPELLATE TRIBUNAL

ITAT: SECTION 54 DEDUCTION CANNOT BE REJECTED FOR NOT DEPOSITING LONG-TERM CAPITAL GAIN IN ACCOUNT SCHEME



The Delhi Bench of the Income Tax Appellate Tribunal (ITAT) has held that deduction under Section 54 of the Income Tax Act, 1961 cannot be disallowed merely for not depositing long-term capital gain (LTCG) that was not deposited in the capital gain account scheme.

The bench of Saktijit Dey (Vice President) and M. Balaganesh (Accountant Member) adopted a hypertechnical approach while dealing with the issue. The judges stated that when the basic conditions of Section 54(1) were satisfied, the assessee was entitled to claim the deduction under Section 54 of the IT Act.

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The appellant-assessee is a resident individual. The Assessing Officer (AO) received information that the assessee sold an immovable property for Rs.62,06,000 and re-opened the assessment under Section 147.

On receiving a notice issued under Section 148, the assessee filed her Income Tax Return (ITR) declaring income of Rs.6,42,470, as already declared in the original ITR.

However, the AO directed the assessee to furnish the details of the properties sold and the resultant capital gain. The latter submitted the details of the property sold and the capital gain arising out of it.

The AO then discovered that the property was under the joint ownership of the assessee and another coowner and was purchased for an amount of Rs.20 lakh. Out of that, the share of the assessee was Rs.10 lakh, whereas the property was sold for Rs.62,06,000. Thus, the assesses' share was Rs.31,03,000.

On reducing the cost of acquisition and indexation benefit, the LTCG arising out of the sale of property was Rs.14,59,324. The assessee invested in the purchase of a new residential property for the entire capital gain amount and, therefore, claimed exemption under Section 54. The AO accepted the ITR, and the assessment was done.

However, the Principal Commissioner of Income Tax (Appeals) later found that the capital gain amount was not deposited in the capital gain account scheme during the interim period until its utilization in the purchase or construction of the new property. The PCIT stated that due to the nonconsideration of these facts, the assessment order was erroneous and prejudicial to the interest of the revenue department.

The PCIT thus issued a show-cause notice to the assessee stating why the assessment order should not be declared erroneous.

Thereafter, the assessee furnished a detailed reply objecting to the proposed action under Section 263.

However, the PCIT rejected it and set aside the assessment order. It directed the disallowance of the deduction claimed under Section 54, as the assessee failed to deposit the capital gain amount in the capital gain account scheme.

The ITAT held that only because the capital gain was not deposited in the scheme, the revisionary authority treated the assessment order as erroneous. It stated that the exercise of power under Section 263 to revise the assessment order was invalid.

Thus, the tribunal quashed the order and restored the assessment order.

drawing and design of the plant and equipment to be manufactured or fabricated and get the same approved by the customer.

The drawings and designs were also required by the customer for locally procuring certain parts, equipment, and other civil construction to be integrated with the imported plant. These were for arranging installation and civil works and the plant's operation and maintenance.

The offshore services contract involved the supply of drawings and designs required for manufacturing imported plant and equipment, the proper installation of equipment, and the synchronization of it with civil construction and locally procured equipment and parts.

The assessee submitted that the entire work related to the drawings and designs was undertaken outside India. The property in the designs and drawings and the equipment had passed outside India. The consideration for these was also received outside India in foreign currency.

It was further contended by the assessee that offshore services were an integral part of the offshore supply of plant and equipment. Therefore, the consideration received should be given the same treatment as offshore supplies, as both were carried

outside India. Since the consideration was received in foreign currency outside India, no part of it should be taxable, as no income was deemed to accrue in India. It would not be taxable as per the Double Taxation Avoidance Agreement (DTAA) between India and Germany

The revenue department contended that the services were purely technical. Hence, was construed as the 'Fee for Technical Services' (FTS) by making them taxable under Section 9(1)(vii) of the IT Act.

However, the tribunal observed that the design and engineering were inextricably linked with the manufacture and fabrication of the material and equipment to be supplied overseas. These formed an integral part of the supply. Hence, were not amenable to tax as FTS.

The bench noted that the consideration qualified as business profits of the company under the provisions of Article 7 of the DTAA.

It could not be attributed to India for computing taxable income in the country. Hence, the income arising from it was not taxable in India.

Accordingly, the tribunal directed the assessing officer to delete the additions made on account of the FTS regarding offshore designs and drawings.

ITAT DELETES ADDITION ON CONSIDERATION RECEIVED FOR OFFSHORE SUPPLIES BY GERMAN ENTITY



The Delhi Bench of the Income Tax Appellate Tribunal (ITAT) has rejected the addition on consideration received by the German entity for offshore supplies.

The bench comprising Challa Nagendra Prasad (Judicial Member) and M. Balaganesh (Accountant

Member) observed that the offshore services that primarily involve the supply of drawings and designs are inextricably linked with the offshore supply of plants and equipment. Accordingly, the receipts from such services do not give rise to any income accruing or arising in India. Hence, are not taxable under the Income Tax Act, 1961.

The appellant/assessee entered a contract with HCC for rendering offshore services comprising planning, designing, and engineering of hydro-mechanical plants and machinery. It included the overall and detailed planning of the project.

The plant and equipment supplied by the assessee from outside India are tailor-made to suit the specifications and requirements of the Kishanganga Project undertaken by NHPC Limited.

Considering the nature, size, and specific purpose of the plant and equipment to be supplied, it was necessary for the assessee to first prepare the

ALLAHABAD HIGH COURT

OUT-OF-COURT SETTLEMENT NOT A LITIGANT'S FUNDAMENTAL RIGHT; CAN BE AVAILED ONLY AS PER THE LAW: ALLAHABAD HIGH COURT

The Allahabad High Court has held that a litigant does not have a fundamental or inherent right to claim settlement of the dispute outside the Court. The right being created by statute must be availed in accordance with it.

The bench comprising Justice Saumitra Dayal Singh and Justice Shiv Shanker Prasad was dealing with a rejection order under the Direct Tax Vivaad Se Vishwas (DTVSV) Act, 2020.

The Court stated, "In the first place, settlement of disputes outside the Courts/judicial process is not a fundamental or inherent right of any litigant. That right was created by the statute i.e. the Act.

Being a statutory right, the same may have been availed strictly in accordance with the statutory conditions. Furthermore, as it was a stipulation that the application/declaration may be maintainable only



if there was pending litigation between the parties before the cut-off date, it remained from the petitioner to satisfy that condition."

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The issue arose when a demand of Rs.1,71,371 was raised against the petitioner under Section 271 AAB of the Income Tax Act. 1961.

In the first appeal, the amount was partly reduced. However, after a delay of 1261 days, the petitioner filed a second appeal, which was condoned by the tribunal. The appeal remains pending.

Meanwhile, the designated authority rejected the petitioner's application for amicable settlement under the DTVSV Act, as the second appeal was filed beyond the cut-off period.

The counsel for the petitioner argued that the petitioner did not want to litigate the matter with the authorities. He pointed out that the policy of the Union government was also to prefer settlement over litigation.

On the other hand, the respondent's counsel cited the judgment of the Supreme Court in the Yashi Constructions v. Union of India case, wherein the petitioner not only failed to file the appeal within the limitation period but also the prescribed cut-off period. He added that no delay condonation application was

filed by the petitioner for the authorities to consider condoning the delay.

The judge held that the petitioner did not have a fundamental right to settle the dispute with the government outside the judicial process. Since availing the right of settlement was granted by an Act, it was imperative to fulfill the conditions.

The bench observed that since the petitioner failed to appeal within the prescribed time limit and did not file a delay condonation application before the revenue authorities, "No right vested or accrued to the petitioner to seek a settlement in terms of the conditions prescribed by the Act."

Thus, while dismissing the writ petition, the Court added that the petitioner's right to appeal before the tribunal was preserved upon condonation of the 1261 days' delay. Therefore, he was not at a loss.

The petitioners were represented by advocates Kartikeya Saran, Divyansh Jain, Paritosh Jain, and Ujjawal Satsangi. ASGI Abrar Ahmad, along with advocates Gaurav Mahajan and Krishna Agarawal appeared for the respondents.

ALLAHABAD HIGH COURT RULES AGAINST RELEGATING CASES OF UNDISPUTED FACTS TO FORUM OF ALTERNATE REMEDY



The Allahabad High Court has held that in tax cases if the facts are undisputed and have issues of jurisdiction and violation of principles of natural justice, those may not be relegated to the authorities. Such cases where minimum statutory compliances have been made are generally referred to the forum of alternate remedy.

The bench comprising Justice Saumitra Dayal Singh and Justice Shiv Shanker Prasad stated, "Relegating the petitioner to the forum of alternative remedy in the face of undisputed facts may be of no real use or purpose. The writ Court regularly relegates petitioners, specifically in tax matters, to the forum of the statutory remedy of appeal where minimum compliances of law have been made. However, on lack of jurisdiction or violation of the principle of natural justice, the writ Court is equally inclined to offer interference to ensure due adherence to the rule of law both by the assessee and the revenue authority."

The petitioner was issued a show-cause notice for cancellation of the Goods and Services Tax (GST) registration on grounds of wrongful availment or utilization of input tax credit (ITC) or tax refund.

The petitioner submitted that a survey was conducted by the Directorate General of Goods and Services Tax Intelligence (DGGI), Delhi and the case was under investigation and not yet finalized. The petitioner added that a writ petition was filed before the High Court. Since the matter was sub-judice, the petitioner requested that the suspension be kept in abeyance.

However, the GST Authority cancelled the registration with retrospective effect from the date of the show-cause notice.

The Court observed that the cancellation of the GST registration order was wholly non-speaking, as no violation of statutory requirements was stated. The authority failed to mention the details of the tax invoices and the period for which the ITC was wrongly availed.

The bench held, "Unless the show-cause notice had made any fact allegation against the petitioner, the vagueness of the reply may remain inconsequential."

The judges stated that cancellation of registration has a serious impact on a business entity. It has the effect of closure of the business, as no tax invoice may be issued, and no return may be filed easily.

Thus, while disposing of the writ petition, the bench directed the authorities that the suspension of registration of the petitioner may remain in force for one month during which the respondent authority may issue a fresh show-cause notice for registration cancellation.

NCLT

NCLT DELHI SETS PRECEDENT: AMALGAMATION OF SOLE PROPRIETORSHIP AND COMPANY ILLEGAL

In a significant legal precedent, the National Company Law Tribunal (NCLT) Delhi Bench, led by Judicial Member Ashok Kumar Bhardwaj and Technical Member L.N. Gupta, rejected an application for merging a sole proprietorship firm with a company, declaring such amalgamations impermissible under current Indian law.

The legality of a distribution agreement between Kajaria Bathware Pvt. Ltd., a company under the Companies Act, 1956, and SVS Marketing, a sole proprietorship firm, was under scrutiny at the NCLT.

Shibu M, both the proprietor of SVS Marketing and a shareholder/member in M/s SVS Marketing Sanitaryware Pvt. Ltd., was prohibited from partially transferring the distribution agreement, potentially raising concerns about potential conflicts of interest or overlapping business interests.

In an attempt to pursue outstanding debts, the Proprietorship Firm executed an Amalgamation Agreement with the Applicant, a Private Limited Company. This agreement involved the assignment of the Proprietorship Firm's actionable claims to the Applicant, empowering them to act as debt collectors on the Proprietorship Firm's behalf.

Faced with payment delinquencies, the Respondent received a demand notice under Section 8 of the Insolvency and Bankruptcy Code, 2016 (IBC). Subsequently, an application under Section 9 led to the commencement of the Corporate Insolvency Resolution Process (CIRP).

The Tribunal grappled with a crucial legal question: whether an amalgamation between M/s SVS Marketing, a sole proprietorship firm, and M/s SVS Marketing Sanitaryware Pvt. Ltd, a company, is permissible under



the law.The Applicant countered by arguing that the agreement restricted the transfer of "obligations" but not the overall business or its actionable claims. They further emphasized that the shared identity of the promoter between both entities, coupled with the specific assignment of actionable claims, rendered the amalgamation legal under existing regulations.

The Respondent strongly opposed the claim of a valid amalgamation, emphasizing the illegality of the transfer between the Proprietorship and the Company. They firmly grounded their argument on the explicit clause within the Distributorship Agreement, which they asserted, prohibited any transfer or assignment without prior written consent from the relevant parties.

Underlining the legal definition of "company" in Section 2(20) of the Companies Act 2013, the NCLT stated that both entities involved in an amalgamation under Sections 230-232 must be registered companies. They emphasized that "company" solely refers to entities incorporated under the Act or previous company laws, excluding sole proprietorships.

LEGAL UPDATES FROM ACROSS THE GLOBE



AARON DIKOS REJOINS AL TAMIMI & COMPANY AS PARTNER IN CORPORATE COMMERCIAL PRACTICE



Al Tamimi & Company, the leading law firm in the Middle East and North Africa has announced the appointment of Aaron Dikos as a partner in the corporate commercial practice.

Dikos has over 16 years of experience in the region. During his earlier stint at Al Tamimi & Company he proved to be an invaluable asset to the firm and its clients. He will contribute to the firm's growth and success of the corporate commercial practice in Kuwait,

reinforcing its commitment to providing top-tier legal services in the region.

He focuses on corporate, commercial, and financial transactions, including mergers and acquisitions, private equity, corporate structuring, and public-private partnership projects. Clients having benefited from his insightful counseling include some of the leading regional and international groups, financial institutions, and oil and gas companies.

Nicholas Watson, the regional head of corporate commercial at Al Tamini & Company remarked, "The corporate commercial practice at Al Tamimi & Company is widely regarded as a market leader in the Middle East and North Africa. This is built on the expertise and experience of our team. Dikos' partnership is a testament to his dedication to providing our clients with the market leading service and advice that is today synonymous with the firm and our corporate commercial team."

On his appointment, Dikos, stated, "I am honored to take on the role of a partner at Al Tamimi & Company. The firm's commitment to delivering exceptional legal services aligns with my professional values. I look forward to contributing to the continued success and growth of the firm."

AL TAMIMI & COMPANY ADDS RICHARD BELL AS A PARTNER

Al Tamimi & Company has appointed Richard Bell as a Partner in its dispute resolution practice.

Bell has over 25 years of experience in the MENA and Asia Pacific regions. He has advised clients in domestic and international arbitrations across the Middle East and has significant knowledge of local law in the United Arab Emirates and Saudi Arabia. He led disputes arising out of foreign direct investment into the UAE and Saudi Arabia, oil & gas downstream services contracts, property development and infrastructure disputes, and company law and insolvency.



Bell's role at Al Tamimi & Company will stretch across two important jurisdictions for the firm - the UAE and Saudi Arabia. His on-the-ground experience and understanding of the two legal landscapes will significantly bolster the firm's client offer.

Commenting on his joining Jody Waugh, the Managing Partner at Al Tamimi & Company, said, "Bell is a welcome addition to the firm, and securing him as a partner is a testament to our ongoing commitment to attracting experts who are highly regarded and can offer market-leading advice to our clients. His extensive experience in handling complex disputes and understanding of the legal landscape will complement our existing capabilities, and further enhance our firm's reputation to deliver the highest quality of service to our clients."

Bell stated, "I am excited to join Al Tamimi & Company, a firm renowned for its exceptional legal practice areas across the region. Its dispute-resolution practice has an unparalleled reputation in the industry. I look forward to contributing to its continued success and reputation for excellence and working with my colleagues in the UAE and Saudi Arabia." Al Tamimi & Company's marketleading dispute resolution practice is positioned to advise clients in litigation, mediation, and arbitration. The team of accomplished practitioners is unrivaled in size and expertise in the Middle East and North Africa and acts on the largest and most complex disputes. The firm boasts long-standing relationships with governments and authorities across the region and its specialist dispute lawyers' work on the ground. It has the rights of the audience before the courts across ten jurisdictions.

💌 Kingdom of Saudi Arabia

SAUDI ARABIA'S MINISTRY OF JUSTICE GRANTS NORTON ROSE FULBRIGHT A FOREIGN LAW FIRM LICENCE

Global law firm Norton Rose Fulbright has been granted a foreign law firm licence by Saudi Arabia's Ministry of Justice, a requirement under the country's new operating regulations. The licence enables the international law firm to continue to provide a full business law service to its clients across the Kingdom of Saudi Arabia.

The new office will be called Norton Rose Fulbright PLLC. It consists of a joint venture formed with The Company of Mohammed A. Altammami for Legal Services (LOMAT), with which the firm announced a new association in April 2023. The inaugural Riyadh-based partners are Mohammed Altammami (the head of the office), Anwar Ouazzani, Abdulkhaliq Elshayyal and David Johnston. The four partners are supported by 16 lawyers and support staff, meaning the firm now has 110+ people based in the Middle East.

The foreign law firm licence permits the practising of Saudi law, in addition to wider international law capabilities. The Riyadh office comprises bilingual English and Arabic lawyers who are both Saudi and internationally qualified.

Mohammed Paracha, Head of Middle East at Norton Rose Fulbright, commented: "This is another milestone for our firm in Riyadh and marks a new chapter for our wider Middle East practice. It comes during an important period for Saudi Arabia, as it continues to work towards Vision 2030, introducing a range of government legislative reforms and undertaking its pioneering Giga Projects." He further added, "Our new office will further enhance our long-established practice in the Kingdom



of Saudi Arabia and ensure we can continue to provide a full business law service to a wide range of clients operating and investing in one of the fastest growing countries in the world."

Mohammed Altammami commented: "We anticipate immense development and increased commercial activity in Saudi Arabia and the wider Middle East region. With our new joint venture and combined capabilities, we are extremely well placed to support our clients on complex domestic and cross-border transactions and disputes. We look forward to continuing to support the goals of both the public and private sectors as the country makes fast progress towards Vision 2030." Together with local partners, Norton Rose Fulbright has operated in the Kingdom of Saudi Arabia for 18 years, providing seamless legal support to international and Saudi-based clients on their inbound and outbound activities.

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WHITE & CASE REINFORCES COMMITMENT TO KINGDOM OF SAUDI ARABIA WITH RHQ LICENSE



Global law firm White & Case is operating directly in the Kingdom of Saudi Arabia following the grant of a foreign law license by the country's Ministry of Justice.

This is in line with new regulations for foreign law firms operating in the Kingdom.

Waad Alkurini, the Executive Partner of the firm in Riyadh commented, "White & Case has been advising on Saudi matters since the 1950s. It is the only international law firm with a seven-decade track record of support for Saudi Arabia. Establishing a direct presence in Saudi Arabia opens a new chapter in our firm's enduring relationship with the Kingdom."

"Our lawyers in Riyadh, the wider Middle East, and throughout our global network will continue to advise leading international and domestic clients on their most important, complex, multi-jurisdictional, and local deals and disputes involving Saudi Arabia," he added.

This strategic move underscores White & Case's commitment to its enduring relationship with the Kingdom.

The law firm has played a pivotal role in advising on several innovative, complex, and high-stakes transactions and disputes involving Saudi Arabia.

As part of its commitment to the region, the firm obtained a Regional Headquarters (RHQ) license from the Ministry of Investment of Saudi Arabia.

Based in Riyadh, the RHQ will serve as a hub for providing strategic support and managing the firm's broader activities across the Middle East and North Africa (MENA) region.

The Riyadh office comprises a team of over 30 lawyers, including five partners, who are proficient in Saudi, English, and US law.

Their expertise covers a spectrum of legal services, encompassing anti-trust and competition law, banking, and finance (including Islamic finance), capital markets, joint ventures, mergers and acquisitions, disputes, foreign investment, and project development and finance.

The team provides comprehensive international and local law advice to leading international and domestic corporates, financial institutions, government entities, and government-related enterprises.

Anwaar Alshammari, a recent addition to the Riyadh team and former senior adviser at the Ministry of Investment has expertise in the global project development and finance practice.

With a keen focus on hands-on, partner-led services, White & Case aims to continue delivering pragmatic, commercial solutions to its clients, helping them achieve their key Saudi-related business goals.

Celebrating its 30th anniversary in Riyadh, White & Case is set to move into a state-of-the-art new office located in the Tadawul Tower, the centerpiece of the King Abdullah Financial District.

The tower will also host the Saudi Stock Exchange and various major banks and financial institutions.

The firm's deep-rooted relationships with major public and private companies, and government entities, highlight its integral role in the development and growth of Saudi Arabia.

White & Case has been active in the Middle East for around 70 years, with an on-the-ground presence since 1989.

It currently has six offices in the region: Egypt (Cairo), Oman (Muscat), Qatar (Doha), Saudi Arabia (Riyadh), and the United Arab Emirates (Abu Dhabi; Dubai).



DUBAI REAL ESTATE COURT GIVES LANDMARK JUDGMENT

The property court in Dubai, United Arab Emirates, has issued a landmark judgment. It established the developer's right to combine the stipulated compensation stated under the contract, along with the loss of profits due to a decrease in the price stemming from the volatility of the real estate market.

The court ruled that the purchaser had to compensate the developer by paying AED 8,300,000 for the following reasons:

- The dismissal of the purchaser's initial lawsuit in which annulment was sought.
- The purchaser was compelled to pay a delay penalty of AED 498,000 to the developer for refusing to take possession of the unit.
- The purchaser was compelled to pay a delay penalty of AED 224,000 to the developer.
- The purchaser was compelled to pay AED 848,000, representing the difference between the amount remitted by the purchaser and the legally prescribed 40 percent to be retained for non-possession of the sold unit.
- The purchaser was compelled to pay an amount of AED 6,721,000 because of selling the units at substantially lower prices than those agreed upon in the contracts. The difference was due to the plaintiff's failure to fulfill his contractual obligations by not paying the sale price.
- The purchaser was also liable for a 5 percent statutory interest, in addition to fees, expenses, and attorney's fees.

While stating the factors, the court said:

- a) The plaintiff (the purchaser) breached his obligations by ceasing to pay the required installments for the sale, and the defendant (the developer) did not default on his obligations. The plaintiff's claims, through which he attempted to substantiate it for claiming the termination of the agreement and the return of AED 8,400,000, were legally unfounded.
- b) The court affirmed that the defendant/ counter-plaintiff/developer met his obligations within the stipulated dates and duly notified the land department about the plaintiff's



breach and payment cessation. The department notified the plaintiff of his obligation. However, the plaintiff failed to fulfill his duties. This prompted the department and the developer to terminate the contract, and the developer, subsequently, sold the property to a new purchaser.

Commenting on the ruling, counsel Tarek Saad, the head of the litigation department at BLK Partners (Khalid El Tamimi in collaboration with BLK Partners) said that the ruling was unique, as it stood among rare such judgments issued by the Dubai courts.

The developer was granted compensation covering all contractual losses and loss of profits, irrespective of the sale of the unit to a new purchaser.

The court elected to supersede the application of the law regardless of whether the purchaser had the same financial solvency as the developer.

The real estate law in Dubai is governed by the Dubai Land Department (DLD) and the Real Estate Regulatory Authority (RERA). They regulate the activities of the developers and brokers.

The strata law applies to multi-unit developments, and foreign ownership laws limit the rights of foreign individuals and companies to own property.

A new real estate law, Dubai Decree No. 22/2022, supports the growth of real estate investment funds.

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United States of America

US APPEALS COURT REJECTS JURY'S \$2.18BN PATENT INFRINGEMENT DAMAGES **AWARD AGAINST INTEL**



The United States Court of Appeals for the Federal Circuit (CAFC) has rejected the verdict from the Texan jury that chipmaker Intel must pay \$2.18bn in damages to the patent-holding company VLSI for infringing two of its patents. However, Circuit judges Alan Lourie, Timothy Dyk, and Richard Taranto agreed with some of the March 2021 jury verdicts from the US District Court for the Western District of Texas.

While they affirmed infringement of one patent ('373) covering the memory and processing of the integrated circuits, the judges reversed the jury finding of infringement of the second patent ('759).

The CAFC vacated the damages award for the '373 patent and remanded it for a new trial limited to damages. In reversing the finding of infringement of the '759 patent, the court agreed with Intel's argument that VLSI's doctrine of equivalents theory to prove infringement was 'legally insufficient'.

Notably, in the US, at times the doctrine is invoked in infringement actions if the accused product does not literally infringe a patent invention but does so under the doctrine of equivalents.

In May, the US Patent and Trademark Office's Patent Trial and Appeal Board (PTAB) found the '759 patent invalid. The PTAB-instituted trial found that all seven claims that were challenged, were unpatentable and denied the patent owner's motion to exclude.

VLSI was represented by Jeffrey A Lamken, Rayiner Hashem, and Michael Gregory Pattillo Jr of Molo Lamken LLP and Morgan Chu, Benjamin W Hattenbach, Alan J Heinrich, Amy E Proctor, Dominik Slusarczyk, Charlotte J Wen, Babak Redjaian of Irell & Manella.

Intel was counseled by William F Lee, Alison Burton, Lauren B Fletcher, Joseph J Mueller, Steven Jared Horn, Amanda, L Major, and Mary Virgina Sooter of Wilmer Cutler Pickering Hale and Dorr.



BARAKAT, MAHER & PARTNERS AND CLYDE & CO ADVISED JAF INVESTMENT ON **DUAL ACQUISITION OF RAWAJ CONSUMER AND UE FINANCE**



Barakat, Maher & Partners in association with Clyde & Co has advised JAF Investment on its ongoing EGP 177 million 30 percent dual acquisition of Rawaj Consumer Finance and UE Finance in Egypt from Arabia Investments Holding, a company listed on the Egyptian Exchange.

JAF Investment, a family office, focuses on investment in growth opportunities across several sectors, including real estate, non-banking financial services, automotive services, logistics, and warehousing.

In 2022, the sector amounted to EGP 216 billion.

signifying the necessity of growth to meet the demands of this constantly expanding market.

The Barakat, Maher & Partners in association with Clyde & Co team was led by partner Mostafa Elsakka. He was supported by senior associate Moataz El Sherbini and associates Walid Enany and Dalya Mahmoud.

With over 30 years of experience in the Middle East and Africa, Clyde & Co is one of the largest international law firms with over 90 partners and over 540 staff operating through nine offices and associated offices in Abu Dhabi, Cairo, Cape Town, Dar es Salaam, Doha, Dubai, Johannesburg, Nairobi, and Riyadh.

The firm supports international and local organizations throughout the wider region with a full-service offering of local specialists across most business sectors and services of law. These include commercial, commercial disputes, corporate, cyber risk, data protection and privacy, employment and immigration, finance, global recoveries, insolvency and reorganization, intellectual property, international arbitration, projects and construction, real estate, regulatory and investigations, technology, outsourcing, and data.

AL-FUTTAIM GROUP EXPANDS ITS PRESENCE IN EGYPT WITH STRATEGIC MERGER

The Al-Futtaim Group, one of the leading conglomerates in the Middle East, has announced a major merger deal that will enhance its footprint in the Egyptian market.

The group's subsidiary, Al-Futtaim for Establishing Institutional Centers (AFEI) has acquired Al-Futtaim for Residential Resorts (AFRRD), a leading developer of luxury resorts and hotels in Egypt.

Valued at EGP 256 million, the deal involves the issuance of 2,560,500 new capital shares by AFEI to the shareholders of AFRRD. The merger will allow AFEI to diversify its portfolio of projects and services and leverage the synergies and expertise of both companies.

AFEI leads in the field of establishing and managing institutional centers, including malls, schools, hospitals, and offices. The company has been operating in Egypt since 2010, and has delivered several landmark projects, such as Cairo Festival City, Al-Futtaim International Academy, and Al-Futtaim Medical Center.



The merger deal was facilitated by the group legal team in Egypt, playing a vital role in conducting the due diligence, negotiating the terms, and drafting the

The team was led by Sue Ellen (group legal director) and Mohamed Yassin (senior legal counsel).



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