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TOP 10 ANTITRUST AND COMPETITION LAWYERS OF INDIA





Competition Law, Regulation, and Practice

In The Current E-Commerce, Digital-First, And Global M&A Times — Future-First Insights From Competition Lawyers

ARBITRATION PROCEEDINGS OF AVATAR VS. AVATAR IN THE METAVERSE!

RBI'S DIGITAL LENDING RULES – A STEP IN THE RIGHT DIRECTION

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GREAT EXPECTATIONS: INDIA'S TRYST WITH CLIMATE CHANGE

Aakriti Raizada
FOUNDER & MANAGING EDITOR

The United Kingdom (UK) Supreme Court (SC) in a landmark decision in October this year has confirmed that the directors have a 'creditor interest duty' when a company is insolvent or there is a possibility of an insolvent liquidation or administration.

The decision concerns a dividend paid in May 2009 by an English company, AWA. While the dividend was legal and was paid when AWA was solvent, AWA had an uncertain conditional responsibility for pollution clean-up costs which gave rise to a real risk - not considered possible at the time - that AWA might become insolvent at an uncertain but not impending date in the future. Indeed, AWA entered insolvent administration 10 years after the dividend was paid. Thereafter, AWA's assignee, BTI, brought a claim against the former directors for return of the dividend saying that the decision to pay the dividend was in breach of their 'creditor interest duty' as insolvency was a real risk at the time. The claim brought by BTI against the former directors was rejected by both the UK High Court and Court of Appeal as the risk of insolvency fell short of being possible at the time. BTI then moved the UK SC saying that the directors' 'creditor interest duty' arises when there is a real (but not remote) risk of a company becoming insolvent at some point in the future. The UK SC unanimously dismissed the BTI appeal as creditor interest duty was not engaged on the facts in the case, considering AWA's insolvency was not even possible at the time of payment of the dividend.

The UK SC judgment is significant as it gives some clarity on what triggers the directors' 'creditor interest duty'. Where a company is insolvent or bordering on insolvency or where insolvent liquidation or administration is possible but not inevitable or where a transaction in question may place the company in one of those situations, the directors must balance the interests of both the creditors and shareholders. But where an insolvent liquidation or administration is inevitable, the directors must consider the creditors' interests as paramount. Despite the judgment, it will, no doubt, continue to be difficult to accurately assess when a company is 'bordering on' insolvency. Hence, the most critical takeaway for directors is to keep themselves up-to-date with the company's financial and other affairs (information).

Coming to Legal Era, we have a combined October-November 2022 edition this time. With Diwali over, there is some peace and quiet till Christmas and New Year celebrations kick in. What better time to sift through the magazine, which is chockfull of reads guaranteed to delight and awe you, be it the intersection of law and booming digital platforms or the intricacies of arbitrations in the Metaverse.

But where an insolvent liquidation or administration is inevitable, the directors must consider the creditors' interests as paramount

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

-Aakriti Raizada
Founder & Managing Editor

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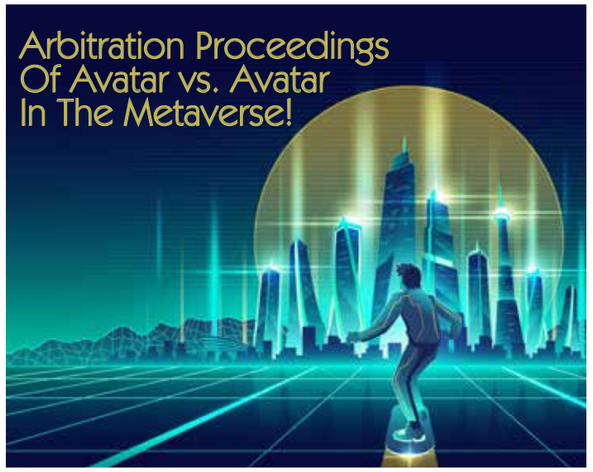
Arbitration Proceedings Of Avatar vs. Avatar In The Metaverse!


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MOONLIGHTING


RBI'S DIGITAL LENDING RULES
A STEP IN THE RIGHT DIRECTION


ENFORCEMENT OF PLEDGE
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Competition Law, Regulation, and Practice
In The Current E-Commerce, Digital-First, And Global M&A Times — Future-First Insights From Competition Lawyers


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DSK LEGAL REPRESENTED CREDAI-MCHI BEFORE THE SUPREME COURT OF INDIA WITH RESPECT TO FLAMINGO CREEK SANCTUARY

DSK Legal advised and represented CREDAI-MCHI before the Hon'ble Supreme Court in the captioned matter. CREDAI-MCHI is part of the Maharashtra chapter of the Confederation of Real Estate Developers' Association ("CREDAI") being the apex body of real estate developers and filed an Interim Application in Re: T. N. Godavarman Thirumulpad v Union of India & Ors (IA NO. 1000 of 2003 in Writ Petition (C) No. 202 of 1995) for clarification of the order dated June 3, 2022 passed by the Hon'ble Supreme Court ("June Order") with respect to the Eco-Sensitive Zone ("ESZ/s") around Sanjay Gandhi National Park ("SGNP") and Thane Flamingo Creek Sanctuary ("Flamingo Creek").

Brief Background:

On February 9, 2011, the Ministry of Environment, Forest & Climate Change ("MoEF & CC") framed guidelines to facilitate the States / Union Territories for declaration of ESZs around National Parks and Wildlife Sanctuaries ("Guidelines").

As per the said Guidelines, the purpose behind declaration of ESZs was to regulate rather than prohibit certain activities around National Parks / Sanctuaries so as to minimize the negative impact of such activities on the fragile ecosystem encompassing these protected areas.

The MoEF & CC had constituted an Expert Committee for considering the proposals received from the State Governments for ESZs.

In the interregnum, MOEF&CC published a draft notification for SGNP in January, 2016 calling for suggestions/objections and thereafter the final notification was issued on December 5, 2016 ("SGNP Final Notification").

The ESZ in the SGNP Final Notification was set as 100m to 4 km. Subsequently, as no proposals were received for 21 National Parks/Wildlife Sanctuaries, vide an order dated December 11, 2018, the Hon'ble Supreme Court directed, as an interim measure, that an area of 10 kms around these 21 National Parks / Wildlife Sanctuaries (including the Flamingo Creek) be declared as an ESZ by the MoEF & CC and granted liberty to State Governments to move for modification along with the proposals ("2018 December Order").

Pursuant to the 2018 December Order, draft ESZ notification for Flamingo Creek was published by the MoEF & CC on November 6, 2019.

Several Expert Committee meetings were held from 2020-2021 to consider the proposal for Flamingo Creek and a revised draft Notification was once again issued on April 8, 2021.

Subsequently, the final notification was published on October 14, 2021 wherein the ESZ extent was set as 0 to 3.89 km. ("Flamingo Creek Final Notification").

June Order:

The June Order was passed by the Hon'ble Court, inter alia, directing that:
(i) the decision in respect of Flamingo Creek has to be placed before this Court;
(ii) the Guidelines are reasonable in suggesting that a 1 km boundary for Category B forests is reasonable, however subject to changes in special circumstances.
(iii) SGNP has urban activities in its close proximity and is a special case; and
(iv) a direction for a mandatory 1 km boundary to be fixed for each protected national park or wildlife sanctuary.

Interim Application:

In view of the fact that the SGNP Final Notification and Flamingo Creek Final Notification ("Final Notifications") were already in force, CREDAI-MCHI filed the captioned application seeking clarification on:

(a) final ESZ notification in respect of SGNP and Flamingo Sanctuary were already published by Ministry of Environment and Forest & CC on December 5, 2016 and October 14, 2021, respectively.

(b) Whilst, passing the June order these final notifications were inadvertently not brought to the notice of the Court and thus it remained to be carved out of the June order, and (c) SGNP has been held as a special case by the Supreme Court itself in its June 2022 order due to urbanization in close proximity and Flamingo Sanctuary is similarly placed.

The captioned Interim Application was heard by the specially constituted Green bench comprising of Hon'ble Mr. Justice B. R. Gavai, Hon'ble Mr. Justice Surya Kant and Hon'ble Mr. Justice J. B. Pardiwala on September 23, 2022 and the Hon'ble Court was pleased to pass an order clarifying that the ESZ boundaries of 1 km fixed by them vide the June Order will not apply to SGNP and Flamingo Sanctuary.

This order has brought a huge respite and relief to the real estate development sector as several large-scale projects in that area which were ongoing in accordance with the Final Notifications were halted by the Forest Department if they fell within the 1 km ESZ boundary.

Team:
Counsels: Sr. Advocates Mr. Mukul Rohatgi, Mr. Atmaram Nadkani along with Mr. Kunal Vajani (Black Robe Chambers).

DSK Legal: Mr. Mani Bhushan (Court Clerk), Ms. Shivani Khanwilkar (Senior Associate), Ms. Saloni Shah (Senior Associate), and Mr. Samit Shukla (Partner).

CYRIL AMARCHAND MANGALDAS ADVISED HUDSON RPO ON ITS ACQUISITION OF HUNT & BADGE

Cyril Amarchand Mangaldas advised Hudson RPO Limited (Hudson RPO), on its 100 per cent acquisition of Hunt & Badge Consulting Private Limited (Hunt & Badge), held by Pichumani D and Vasundhara R, by way of a share purchase.

Hudson RPO is a global recruitment process outsourcing company providing recruiting solutions.

Hunt & Badge was founded in 2013 by Pichumani Durairaj, who has two decades of experience in the recruitment industry. The Chennai-based startup offers recruitment services to its clients, which include startups, multinationals and more.

The General Corporate Practice of Cyril Amarchand Mangaldas advised Hudson RPO for the transaction and assisted with due diligence, reviewing, and finalizing the transaction documents. The transaction team was led Smruti Shah, Partner; with support from Aviral Chauhan, Principal Associate; Gauri Devpura, Senior Associate; and Utkarsh Mankad, Associate.

The due diligence team was led by Smruti Shah, Partner; with support from Aviral Chauhan, Principal Associate; Devanshi Dalal, Senior Associate; and Utkarsh Mankad, Associate.

Other Parties and Advisors to the transaction included SKS Advisor (Acted as advisors for Hunt & Badge and Pichumani D & Vasundhara R).

The transaction was signed on August 19, 2022; and closing on August 31, 2022.

S&R ASSOCIATES REPRESENTED LIGHT MICROFINANCE IN ITS ₹1.96 BILLION SERIES B FUNDING ROUND

S&R Associates represented Light Microfinance, an RBI-registered NBFC, in its ₹1.96 billion Series B funding round led by British International Investment (UK) with participation from existing impact investors Nordic Microfinance Initiative (Norway), Triple Jump (Netherlands) and Incofin (Belgium).

Light Microfinance was founded in 2009 by Deepak Amin (MD), Rakesh Kumar (CEO) and Aviral Saini (CFO). It is headquartered in Ahmedabad and has operations across Gujarat, Rajasthan, Madhya Pradesh and Haryana. The company has been making significant investments in building its proprietary analytics platform which has already started yielding rich dividends for the company.

The company doubled its assets under management (AUM) to over ₹1300 crores and over 3 lakh customer base spread across 68 districts in 4 states.

The S&R team was led by partner Viral Mehta, and included counsel Kinnari Sanghvi and associate Vyoma Mehta.

HERBERT SMITH FREEHILLS ADVISED REEJIG ON RECENT VENTURE CAPITAL RAISE

Herbert Smith Freehills has advised Reejig Pvt Ltd on its most recent venture capital raise. The round was led by Salesforce Ventures, the corporate venture capital arm of Salesforce.

This new capital will be employed to fund the continued rapid growth and expansion of the company, further develop its award-winning workforce intelligence technology, and drive Reejig's mission for Zero Wasted Potential in people, businesses, and society.

Reejig — which has offices in Australia, the United States, the UK and Singapore — is an award-winning workforce intelligence platform that helps global enterprises find, mobilize, upskill and reskill talent at scale using Ethical Talent AI to provide visibility of workforce skills and potential and act as the 'central nervous system' for talent decisions.

Besides the new capital raise, Reejig also announced the launch of the Reejig Impact Fund to help underrepresented communities unlock career opportunities, growth, and potential.

The Herbert Smith Freehills team was led by Co-Head of Venture Capital (Australia) Elizabeth Henderson, solicitor Vincent Greco Schwartz, and Nick Venn.

CLIFFORD CHANCE ADVISED ACTIS ON LAUNCH OF PORTFOLIO BUSINESS

Clifford Chance acted as the legal advisor for Actis, a leading global investor in sustainable infrastructure, on the launch of its portfolio business Rezolv Energy, an independent clean energy, power producer into Central and South Eastern Europe. In pursuant to this launch, Resolve Energy acquired majority interest in the Vis Viva onshore wind project in Romania from UK-based investment company Low Carbon.

With this, Rezolv aims to build a multi-gigawatt portfolio of wind, solar and energy storage projects. This will help companies and countries across the region meet their energy needs in response to energy security challenges and climate policies. It will take renewable energy projects from late-stage development through construction and into long-term operation.

Partnering with Low Carbon, Rezolv is to complete the acquisition of a 51 percent interest in the 450MW Vis Viva onshore wind project in Buzau County, Romania. Once operational, Vis Viva will be one of the largest onshore wind farms anywhere in Europe, with the capacity to generate sufficient clean energy to power more than 272,000 homes and avoid approximately 180,000 tons of CO_2e each year. It will play a major role in accelerating the transition away from fossil fuels in Romania, whilst providing long-term, stably priced electricity to commercial and industrial consumers across the region.

This is a landmark clean energy transaction for the region demonstrating Clifford Chance's ability to combine our market-leading position as advisor to global investors in renewable energy platforms and our local expertise as the only leading international law firm with a fully integrated office in Romania.

The cross-border Clifford Chance team was led by London clean energy M&A partners Nicholas Hughes and Jonathan Dillon alongside Nadia Badea (Partner, Bucharest) and Loredana Ralea (Counsel, Bucharest) with support from Alex Bouwman (Senior Associate, London), Alexandra Voicu (Senior Associate, Bucharest), Lavinia Dinoci (Senior Associate, Bucharest), Ecaterina Burlacu (Senior Associate, Bucharest), Andrei Caloian (Senior Associate, Bucharest), Carmen Buzenche (Lawyer, Bucharest), Michal Jašek (Counsel, Prague) and Tomáš Procházka (Associate, Prague).

SHARDUL AMARCHAND MANGALDAS ADVISED SKILLATE AND ITS FOUNDERS IN ITS ACQUISITION BY SOFTBANK & ACCEL

Shardul Amarchand Mangaldas & Co advised Skillate Laboratories Private Limited and its founders (Bipul Vaibhav, Kumar Sambhav and Anand Kumar) in its 100% acquisition by Sense Talent Labs, Inc.

Skillate provides AI-powered recruiting solutions to global enterprises. The existing investors of Skillate, viz., Mynavi and Incubate Fund also sold their shares in Skillate to Sense. The transaction team of Shardul Amarchand Mangaldas was led by Abhishek Dubey, Partner; Shatakshi Gupta, Associate; and Hetal Doshi, Associate.

Samvad Partners and BDO India advised Sense Talent Labs, Inc. Khaitan & Co and KPMG advised Mynavi Corporation. Pier Counsel advised Incubate Fund Pte. Ltd.

CYRIL AMARCHAND MANGALDAS ADVISED SOCIAL WORTH AND ITS FOUNDERS ON SERIES D FUNDRAISE

Cyril Amarchand Mangaldas advised Social Worth Technologies Private Limited (Social Worth) and its Founders, on a USD 110 million Series D fundraise from TPG, Norwest Capital and Piramal Capital. Social Worth operates the app "EarlySalary". The General Corporate Practice of Cyril Amarchand Mangaldas advised on the Transaction. The team also advised the existing investors in the current round. The transaction team was led by Maheshwari Sundaresh, Partner; supported by Jesika Babel, Senior Associate; and Anisha Keshava, Associate.

Avinash Umapathy, Partner; and Adheesh Agarwal, Senior Associate Designate; advised on regulatory matters. The transaction was signed on August 18, 2022 and closed in August 2022.

SAHYADRI FARMERS PRODUCER COMPANY LIMITED AND SAHYADRI GROUP ADVISED BY DSK LEGAL IN RELATION TO FOREIGN INVESTMENTS

DSK Legal advised and assisted Sahyadri Farmers Producer Company Limited and its group companies ("Sahyadri Group") in relation to foreign investments raised in Sahyadri Farms Post Harvest Care Limited ("SFPHCL"), the subsidiary of Sahyadri Farmer Producer Company Limited ("SFPCL").

SFPHCL has raised ₹310 crore (almost € 40 million) growth capital from a group of impact-focused investors namely, Incofin, Korys, FMO and Proparco.

SFPCL is a producer company incorporated under Part IXA of the erstwhile Companies Act, 1956 and is recognized as India's leading agro-producing company.

This is the first of its kind international equity investment in a farmer-led organization in India. Sahyadri would be using this capital to expand its fruit and vegetable processing capacity and set up a packhouse and biomass plant to generate electricity from Agri and food waste.

According to Vilas Shinde, founding farmer and managing director of Sahyadri Farms, the company intends to make farmers think like entrepreneurs and build a sustainable, scalable and profitable organization and also make farming profitable and viable activity for each small and marginal farmer.

DSK Legal assisted in conducting vendor's due diligence of the following companies of the Sahyadri Group and assisted in identifying key legal issues before the investment transaction:

- Sahyadri Farmers Producer Company Limited;
- Sahyadri Farms Post Harvest Care Limited;
- Sahyadri Farms Supply Chain Limited; and
- Sahyadri Agro Retail Limited

The DSK Legal team comprised Mr. Niraj Kumar (Partner), Ms. Prachi Gupta (Principal Associate), Ms. Khushboo Khatreja (Of Counsel), Mr. Satendra Rai (Principal Associate), Mr. Shubham Khandelwal (Senior Associate), Mr. Diwankar Sethi (Associate), Ms. Pavneeka Parashar (Associate) and Ms. Rashi Tolani (Trainee).

Alpen Capital acted as the exclusive strategic advisor to Sahyadri Farms for this transaction.

AMRIT MEHTA JOINS INDUSLAW AS A PARTNER IN MUMBAI

Amrit Mehta

Amrit Mehta has joined IndusLaw as a partner in the transactions practice at the firm's Mumbai office. He was previously working with Majmudar & Partners.

With over 14 years of experience, Mehta is experienced in corporate/M&A and advising on insurance and employment matters. He has advised extensively on domestic and cross-border acquisitions, joint ventures, and foreign direct investments.

On his joining, Avimukt Dar and Suneeth Katarki, the founding partners at IndusLaw, said, "Mehta is a seasoned deal lawyer and his addition will further bolster our cross-border transaction experience and capabilities in serving global clients. He joins the expanding Mumbai office as our sixth M&A partner in the financial capital of India. We welcome him to the partnership and wish him all the very best."

In his new role, Mehta remarked, "I am delighted to join IndusLaw. Having seen the firm grow from strength to strength over the last decade, I am glad to have this opportunity to be part of its journey ahead. I believe IndusLaw provides the right fit and platform for me to grow my practice. I am looking forward to working with its excellent bench of practitioners."

Mehta is a 2008 graduate of the National Law University, Jodhpur. He has worked with leading law firms including Amarchand & Mangaldas and Suresh A Shroff. He also had a stint as a foreign lawyer on secondment at Mari Hamada & Matsumoto in Japan.

Until recently, Mehta was a partner in the corporate/M&A practice with Majmudar & Partners, where he worked for a cumulative period of over 11 years.

AJAY UPADHYAY RETURNS TO AZB & PARTNERS AS PRACTICE HEAD – COMPLIANCE AND INVESTIGATION

Ajay Upadhyay has moved to AZB & Partners as Practice Head – Compliance and Investigation in Mumbai from KPMG India. Before joining AZB, he was working as a Partner in the Forensic Services at KPMG India.

Before joining KPMG India in December 2017, he was working with AZB &Partners as Practice Head – Compliance and Investigation Practice from 2015 to 2017.

He has also worked with Ernst & Young LLP between 2010 and 2015 where he climbed up to the position of as Director in Fraud Investigation and Dispute Services.

In a Press Release, AZB & Partners announced Ajay's rejoining in the firm. According to the Press Release, "AZB is committed to further deepen and expand its White Collar Crime Investigation and Defense Practice. We are delighted to inform that Ajay Upadhyay who had started and led this practice area in 2015 is rejoining AZB."

The existing team led by Soumit Nikhra will continue to work alongside Ajay. Soumit had taken over the Compliance and Investigation Practice at the firm after Ajay left the firm in 2017.

Ajay is a Chartered Accountant having two decades of experience in areas of Dispute Resolution, Expert Witness, Forensic Investigations, Financial Crime Investigations, Regulatory Investigations and Advisory Services.

AMIT KATARIA JOINS KING & SPALDING AS M&A AND PRIVATE EQUITY PARTNER

King & Spalding has announced that Amit Kataria has joined as a partner in the corporate, finance & investments practice group at the firm's London and New York offices.

Todd Holleman, the head of the firm's CFI practice commented, "Kataria has a robust international practice that fits squarely within our strategy to ramp up our European transactional practice, so that it helps drive opportunities across our global platform."

He added, "Kataria also has significant experience in key Asian and Middle Eastern markets and very strong ties with the US, including being a US-qualified lawyer. He will be a critical link for our transactional capabilities internationally, and in particular for our transatlantic private equity work and efforts in the technology space."

On his joining the firm, Kataria stated, "I am joining King & Spalding at a very exciting time for the firm, as it continues its momentum in the European transactional market and expands its global platform. I am looking forward to bringing my experience with complex cross-border transactions to the firm and collaborating with my colleagues to help further drive this growth."

Kataria worked at Morrison & Foerster for over seven years, initially as a counsel and later as a partner. He has extensive international transactional experience, advising on M&A, private equity investments, securities offerings and a broad range of transactional and corporate advisory matters spanning the US, the Middle East, Latin America, Asia and Europe.

A 2004 graduate of the University of Delhi, in 2007, he earned his LL.M. from the Columbia Law School. With over 15 years of experience, Kataria began his career at Debevoise & Plimpton. He later joined Davis Polk & Wardwell as a registered foreign lawyer for over three years.

SHEETAL SAWHNEY KAPUR JOINS AMAZON AS HEAD - PAYMENTS AND PRIVACY LEGAL

Erstwhile Director - Legal at Netflix, Sheetal Sawhney Kapur has joined Amazon as their Head - Payments and Privacy Legal. She will be leading AmazonPay and all other payments and privacy assignments for the company.

Sheetal held the position of Director - Core Legal for India and South Asia regions at Netflix where she was involved in growing partnerships, managing the technology platform and developing payments related infrastructure for the brand. She was also the Designated Partner for Netflix's India entity. Sheetal, through these years, has had an illustrious legal career, essentially in the technology space, wherein she has worked on key projects with the tech giant Google.

Prior to joining Google, she saw the immense potential in the digital payments space in India, that led her to join PayU Payments in 2013. Sheetal started her career at Fasken Martineau LLP, one of the top law firms in Toronto, Canada. She moved to India in 2011 and worked at J Sagar and Associates in the private equity and M&A practice. Post her stint at Google, she moved to Netflix in 2019.

Sheetal holds a Masters degree in Public and International Law from the University of Melbourne. She had pursued her LLB from ILS Law College in Pune.In terms of industry representations, she is an Executive Committee Member- Privacy and Data Protection for the Indian National Bar Association, Member of the CII Task Force on Legal Services for 2020 and 2021 and Chair for the Sub-Committee on IT and ITES of the CII Task Force on Legal Services for 2021.

Sheetal has won several awards for her work in the technology and payments space such as Legal Era's Star Women in Law, BW Legal "40 Under 40", BW Legal Top 100 GCs, Forbes Top 100 GCs Powerlist, "Top 100 Powerful Women in Law" by the World IP Forum and "India's Top 30 GCs and Chief Legal Officers 2020" by LawSikho.

RAJAT JARIWAL TO JOIN TRILEGAL AS A PARTNER IN NEW DELHI

His induction will take the law firm's partnership to 82.

Trilegal has announced that Rajat Jariwal will soon be joining as a partner in its Disputes Practice in New Delhi after quitting Khaitan & Co.

Sridhar Gorthi, Partner and member of the management committee at Trilegal, said, "We are delighted to welcome Rajat to the firm. We expect him to play a crucial role in the firm's growing ESG practice and to contribute both on advisory matters as well as on environmental litigation defense. We see his expertise as being highly complementary to our disputes practice and in particular to our infrastructure, real estate and asset management practices."

Shankh Sengupta, Partner and Head of the Disputes practice, Trilegal, said, "We are excited to welcome Rajat to our practice. Environmental law is now central to businesses and Rajat's addition is in line with our commitment to deepen expertise on all aspects of law within the firm."

With over 17 years of experience, Jariwal specializes in environment defense litigation and environment advisory. He regularly appears before the Supreme Court and the National Green Tribunal (NGT).

A 2005 graduate of the Campus Law Centre, New Delhi, he also advises on general civil/commercial disputes, including shareholder disputes (before the National Company Law Tribunal and arbitral tribunals, institutional and ad-hoc), tender matters, defamation matters, and mining matters arising out of the Mines and Minerals (Development and Regulation) Act.

ESHA CHAKRAVARTY JOINS CTRLS DATACENTERS AS A GENERAL COUNSEL

Esha Chakravarty has joined CtrlS Datacenters Ltd. as a general counsel after quitting Nuvoco Vistas Corp. Ltd, where she served as a general manager, legal, for over three years.

Chakravarty will lead the legal team, looking after matters pertaining to other group companies and affiliates of the company including Cloud4C Services.

A 2008 graduate of the University of Mumbai, Chakravarty began her in-house journey with Aegis Ltd-Essar Group. Following that, she worked at UPL Limited as a senior manager legal for three years. Later, for over a year, she served as a general manager of corporate legal at Datamatics Business Solutions.

Esha Chakravarty

With over 14 years of experience, Chakravarty has also worked with prominent law firms including Majmudar & Partners.

VERTICES PARTNERS ACQUIRES LEGUMRADIX & ASSOCIATES

Manasi Pathak Verma

Vertices Partners has announced its expansion with the acquisition of LegumRadix & Associates – a Corporate Commercial law firm that specializes in Compliance and Regulatory Advisory services.

Manasi Pathak Verma, formerly the Founder & Managing Partner at LegumRadix, along with a team, has also joined the Vertices Team as the latest Partner in the Corporate Practice, in the NCR offices, to build on the Compliance & Regulatory Advisory vertical of the firm, the statement said.

Prior to starting her independent firm and now merging it into that of Vertices Partners, Manasi had played key roles as in-house counsel as well as in various law firms. These included Flipkart, L&T Housing Finance Ltd., Themis Associates, and M.V. Kini. This expansion comes after the Firm announced an earlier addition to its partnership with the joining of Jayesh Karandikar whose role

is focused on building on the Real Estate vertical of the firm.

With over six years into the business, Vertices Partners continues to advise clients in diverse sectors including D2C, Banking & Finance, Pharmaceuticals & Life Sciences, Technology & Telecommunications, Manufacturing, Agri-tech, EdTech, FinTech, Media and Entertainment, Hospitality, Health Care, Retail, and Insurance, amongst others. The firm also closed a transaction in the real estate practice within the pharmaceutical sector earlier this month.

JEET CHAUDHURI, RAMYA SURESH AND SHIVANAND NAYAK BECOME PARTNERS AT AZB & PARTNERS

AZB & Partners has promoted three lawyers - Jeet Chaudhuri, Ramya Suresh, and Shivanand Nayak to a partnership.

Jeet is a 2013 graduate of the West Bengal National Academy of Juridical Sciences (NUJS), Kolkata. He has been with the firm for over four years and has been elevated to partnership in the corporate/M&A, private equity & venture capital practice. Prior to joining the firm in 2018, he was with Trilegal for over five years.

Ramya is a 2011 graduate of Amity Law School and is a company secretary from the Institute of Company Secretaries of India. Having joined the firm a couple of months ago as a counsel, she is a part of the corporate/M&A, private equity & venture capital practice. She has previously worked with leading firms including Trilegal and DSK Legal.

Jeet Chaudhuri, Ramya Suresh, and Shivanand Nayak

Shivanand is a 2012 graduate of the University of Mumbai. He joined the firm in 2014 and has worked with it for eight years before being promoted to partnership at the banking & finance team. Previously, he worked with Wadia Ghandy & Co.

DENNIS AGNEW JOINS SQUIRE PATTON BOGGS AS MANAGING PARTNER OF ITS DUBLIN OFFICE

He specializes in cross-border Mergers and Acquisitions for both industry and private equity.

Squire Patton Boggs, one of the top 50 law firms in the United States, has opened an office in Dublin with the help of Dennis Agnew, a founding partner at Pinsent Masons' Dublin branch.

Earlier this week, it was reported that another founding partner of Pinsents' Dublin office, Gayle Bowen, was leaving to open funds-focused office at K&L Gates.

Dennis Agnew

The opening of Squire's Dublin office, which Agnew will lead as managing partner, has been called a "milestone" in the firm's global expansion by Mark Ruehlmann, Squire's chair, and global CEO.

In 2017, Agnew became a founding partner of Pinsents' Dublin office after moving from local firm Byrne Wallace, where he had also worked as a partner. He specializes in cross-border Mergers and Acquisitions for both industry and private equity.

"Ireland continues to emerge as a significant hub of corporate activity in a post-Brexit world across numerous major sectors of our worldwide practice," said Steve Mahon, global managing partner for clients and strategy at Squire. "With the opening of our Dublin office, we will be able to better serve our clients who are conducting business or making plans to invest in Ireland."

Agnew is anticipated to spearhead the recruitment drive in Dublin when Squire's new office opens at the beginning of next May. The company, headquartered in Cleveland, Ohio, will have its fifteenth European office there. In 2021, it made $1.14 billion in sales and $1.52 million in profit per equity partner, according to law.com.

In the wake of the Brexit vote in 2016, international law firms like Squire and K&L Gates have continued to invest in Ireland's legal market because of the country's position as a centre of commerce in Europe and an English-speaking jurisdiction within the European Union.

VINCENZO FELDMANNRE JOINS MAYER BROWN AS PARTNER IN PARIS

Vincenzo Feldmann, a former partner in Mayer Brown's Employment & Benefits department in Paris, has returned to the firm in the same capacity. After three years as a counsel at Gide Loyrette Nouel, he joined Mayer Brown.

According to Paris managing partner Jean-Philippe Lambert, with Vincenzo's joining, Mayer Brown strengthens its comprehensive and industry-leading offering to founders, executives and staff, in particular in the context of private equity transactions."

When it comes to large and mid-cap LBO transactions, Vincenzo is an expert in the negotiation and structuring of management packages. Vincenzo has been a trusted advisor for traditional mergers and acquisitions (M&A) deals, public company incentive plan rollouts, CEO equity package negotiations, and big industrial group incentive plan structuring. Moreover, he serves as a governance advisor to individuals and French and international businesses.

"It is an honour and a pleasure for me to return to the company as a partner. Vincenzo believes that Mayer Brown's prominent Tax, Corporate, and Financing divisions provide the appropriate

Vincenzo Feldmann

platform to strengthen their industry-leading business and give customers with the excellence they want, especially in light of the market uncertainty that lies ahead".

The Mayer Brown team is thrilled to have Vincenzo return. He will work with us to establish, oversee, and grow the Employment & Benefits practice in Paris. His hiring will also strengthen our team internationally, said Dr. Guido Zeppenfeld, managing partner in Germany and head of the Employment & Benefits practice for the entire company.

4th Annual
LEGAL ERA
WOMEN IN LAW EXCELLENCE AWARDS 2022

"Recognizing Women Leadership, Finesse & Achievements"

Recognizing the Leading Women Stalwarts of the Legal Industry at the 4th Annual Women Leadership Awards

On 27th August 2022, the leading women stalwarts of the legal industry gathered at **the 4th Annual Women Leadership Summit and Awards 2022** conducted by Legal Era - Legal Media Group at Hotel The Imperial, New Delhi.

The esteemed awards recognize and honor the leading lights of the legal industry whose commitment, expertise and strong leadership has helped them achieve success in an increasingly challenging legal industry.

These prestigious awards tonight honored the remarkable success of the women of the esteemed legal fraternity. The winners basked in glory after being bestowed upon with the Women in Law Awards in honor of their profession and to acknowledge their achievements. A distinguished Jury chose the Star Women Lawyers of the Year.

Madhavi Divan, Additional Solicitor General of India

The day began with the **4th Annual Leadership Summit.** The Welcome Address was given by **Neera Sharma – Chairperson, Legal Era Women Lawyers Network – North and Chief Executive & Legal Officer, Sistema Smart Technologies Ltd.**

The first session was with a very interesting panel on **'In-House Counsel To Booking A Seat At The Boardroom: Tips And Recommendations For Women General Counsels, Director Legal Or Head Legal'.**

The session was moderated by **Neera Sharma, Chief Executive & Legal Officer, Sistema Smart Technologies Ltd., and the panel members were Manjaree Chowdhary, Senior Executive Director and General Counsel, Maruti Suzuki India Limited, Pooja Sehgal Mehtani, General Counsel, SunLife Asia Centres and Company Secretary, Asia Service Centre India; Meenu Chandra, Managing Director, Office of the General Counsel, Head Legal for Asia Acceleration Centers, PwC US, Arpita Sen, Associate General Counsel, Intel Corporation India and Sudipta Ghosh, General Counsel, Apraava Energy.**

The second session was titled **'Rising To The Top Of Corporate Hierarchy Within In-House Legal Teams In Market Leading Brands: How Have These Women Achieved What They Have?'**

The Moderator of this session was **Lakshika Joshi, Associate GC Capgemini and Lead IP Counsel, Global, Capgemini Engineering; and panel members comprised of Sormistha Ghosh, Group General Counsel and Chief Risk Officer, Strides Pharma Inc.; Anjali Balagopal, General Counsel, Tata Technologies; Suchita Saigal, General Counsel, Cleantech Solar and Anamika Gupta, General Counsel, India and SASSA, Eli Lilly and Company.**

The event stirred conversations with a panel discussion on **'Women In Today's Global Litigation Profession: Opportunities And Challenges In A Post-Pandemic World That Stands Significantly Disrupted'.**

The session was moderated by **Misha, Partner, Shardul Amarchand Mangaldas & Co with our renowned women Litigators Meenakshi Arora, Sr. Advocate, Supreme Court of India and Geeta Luthra, Sr. Advocate, Supreme Court of India.**

The Awards Ceremony began with a Keynote Address given by **Dr. Lalit Bhasin, President, Society of Indian Law Firms and Madhavi Divan, Additional Solicitor General of India.**

Madhavi Divan, Additional Solicitor General of India, expressed in her evocative and thoughtful address, **"It's wonderful to see women flourishing in the legal profession. These awardees are remarkable trailblazers. Nothing short of heroic. Today diversity has become a buzzword. But back then when I started, there were very few people to encourage women. And these awardees have shown tenacity that is nothing short of remarkable. Litigation is a very challenging area of the law. It's a great initiative by Legal Era to take this on!"**

Dr. Lalit Bhasin, President, Society of Indian Law Firms

Highlighting the current scenario and gaps, she opined, **"We need to be persuasive. Even today, in the Bombay High Court, there is almost no senior counsel who is a woman. I have had to downplay my gender so that I didn't miss opportunities. The confidence and competence to shine in the profession call for opportunities. If women are to flower in litigation at the top, where it gets sparser, it is perhaps the lack of frequent and adequate opportunities that women get in commercial litigation...that does not help women with performing in court...It is important that the fraternity, sisterhood, supports women across their professional journeys. We should not need to play down our gender. We should not have to feel insecure."**

Raising the question of how we create that excellence and merit so that women counsels are seen as bankable, Madhavi shared a couple of suggestions, **"One is opportunity. When you see or spot a young woman who is a talent you got to try and encourage it. That's a duty we all owe. And two, we have to talk about other issues. Law firms can initiate discussions on how we can have a family along with our professional growth. Men don't have to make that choice. Why should women have to make that choice? It is as important for women as men to feel sorted about their emotional and mental health to be able to prepare for the matter and perform in court. And three, we need to have these conversations early on in life, in our families, and in law schools. We need to be alerted on how your gender can obstruct your career trajectory so that we can take the right steps and find practical ways to work our way through."**

Meenakshi Arora, Sr. Advocate, Supreme Court of India, Geeta Luthra, Sr. Advocate, Supreme Court of India and Nina Bhasin, Advocate, Supreme Court of India and Managing Partner, Bhasin & Co. were awarded Star Women Lawyer of the Year (Icons).

(L to R): Neera Sharma, Chief Executive & Legal Officer, Sistema Smart Technologies Limited; Manjaree Chowdhary, Senior Executive Director and General Counsel, Maruti Suzuki India; Pooja Sehgal Mehtani, General Counsel, Sun Life Asia Service Centres and Company Secretary, Asia Service Centre India; Meenu Chandra, Managing Director, Office of the General Counsel, Head Legal for Asia Acceleration Centers (PwC US); Arpita Sen, Associate General Counsel, Intel India & Sudipta Ghosh, General Counsel, Apraava Energy Private Limited

(L to R): Lakshika Joshi, Associate GC Capgemini and Lead IP Counsel, Global, Capgemini Engineering; Sormistha Ghosh, Group General Counsel and Chief Risk Officer, Strides Pharma Inc.; Anjali Balagopal, General Counsel, Tata Technologies; Suchita Saigal, General Counsel, Cleantech Solar and Anamika Gupta, General Counsel, India and SASSA, Eli Lilly

(L to R): Geeta Luthra, Sr. Advocate, Supreme Court of India; Misha, Partner, Shardul Amarchand Mangaldas & Co & Meenakshi Arora, Sr. Advocate, Supreme Court of India

Meenakshi Arora

Sr. Advocate, Supreme Court of India

Senior Advocate, Ms. Meenakshi Arora, has been practising in the Supreme Court since 1985, and is a senior designated counsel. She brings over 29 years of experience and experitize in the field of litigation and is considered one of the leading counsels in the country. In 1984, Ms. Arora got enrolled at bar and since 1986 has been practising law at Supreme Court of India. In 1989, she qualified and became an Advocates-on-Record at the Supreme Court. She had also, for a brief period, worked with Goodwin and Soble, an international law firm based in Washington DC. She was also a partner at an Indian law firm Hemant Sahai and Associates. In 2010, her name was recommended by a judges' collegium for elevation as a judge of the Delhi High Court however she later withdrew her consent from the judgeship. She was also the standing counsel for the Election Commission of India. In September 2013, full bench of Supreme Court headed by then Chief Justice of India P. Sathasivam designated her as a senior counsel/senior advocate being only the fifth woman to be designated so.

Nina Gupta Bhasin

Managing Partner, Bhasin & Co. Advocates

Nina Gupta Bhasin is the Managing Partner at Bhasin & Co. Advocates. She is a veteran in the legal space with over 42 years of practice. Apart from spearheading the Supreme Court Litigation Section of the Firm, Ms. Nina specializes in Labor and Employment Laws, ADR, Aviation Laws. She has been actively associated with various statutory air crash inquiries, payment of compensation to the air crash victims, vetting of wet and dry lease agreements of Aircraft, etc. Her practice areas also include Banking Law, Product Liability and Real Estate.

Ms. Nina has been selected Arbitrator by the ICC International Court of Arbitration and also serves as the Vice President of Delhi Chapter of Society of Indian Law Firms. She is also a qualified Mediator recognized by the Mediation and Conciliation Project Committee, Supreme Court of India. She has been awarded 'Woman of Substance, Leadership Excellence Award by Legal League Consulting and Management Consultants to the Global Legal Industry. Ms. Nina has also been conferred with Award of "Exceptional Women of Excellence" by All Ladies League & Women Economic Forum. She is the member of the Gender sensitization committee of the Supreme Court Member of the executive committee of the bar of the Supreme Court.

Geeta Luthra

Sr. Advocate, Supreme Court of India

Ms. Geeta Luthra is a designated Senior Advocate, in the Supreme Court of India. She has an LL.M (Masters in Law) and M. Phil. in International Relations from the University of Cambridge, UK. She has been practising law since 1980, in the Supreme Court of India and various High Courts of India. She is the Vice President of the Indian Council of Arbitration FICCI, member ICC India chapter Core committee, member LawAsia and International Academy of Family Lawyers. She is also a member of the Women's White Collar Defense Association (WWCDA). Has served as a sole arbitrator in many cases of domestic and international arbitration. Being a Senior Advocate, she has argued/represented various Public Sector Units and Private Companies in arbitral disputes. She has appeared as a counsel in several landmark cases, and has expertise in myriad facets of law, including Criminal Law, Constitutional Law, Arbitration Law, Human Rights, Economic offenses under the Prevention of Money Laundering, PMLA Act, Benami transactions and other criminal and appellate remedies before the adjudicating PMLA authorities. She has also argued matters relating to insolvency bankruptcy courts in the NCLT

Amaya Singh

Partner, Lexorbis

Amaya is an IP attorney, with expertise in the field of Trademarks, which she has been practising since the last 18 years. Her journey as a lawyer began as a Trademark attorney in 2003. She is adept at handling all stages of a trademark and has handled large clients on both the prosecution and opposition fronts. In addition to taking care of trademark portfolios, she is also the Partner for the overall Business Operations at the Firm.

Amaya leads the Trade Marks practice at LEXORBIS. With over 8 years of experience as a Trademark attorney, she has acquired expertise in national and international filing and prosecution of trademarks. She is also a key attorney for handling enforcement and contentious trademark matters.

Anamika Gupta

General Counsel, Eli Lilly (India & Subcontinent) Ex-Pfizer, Mondelez, Essity

Anamika Gupta is the Legal Director and General Counsel for Eli Lilly and Company India, South Africa and Sub-Saharan Africa (SASSA). She holds over 17 years of legal experience in the field of corporate and commercial law with diverse industries such as pharmaceutical, consumer goods, FMCG and the food industry.

Anamika joined Eli Lilly India in April 2020 amidst the peak of COVID-19 pandemic and over the last 2 years, she has supported the Eli Lilly business in navigating through various challenges. During COVID-19 Wave 2 in India (2021), Anamika was a core part of the Eli Lilly team which supported the Indian government with Eli Lilly's anti-COVID therapies. She was also a key contributor towards the strategic partnership that Eli Lilly India announced last year with the Indian pharma company, Cipla, for Eli Lilly's Diabetes portfolio. In addition to India, Anamika also serves as the General Counsel for Lilly South Africa and Sub-Saharan Africa.

Anjali Balagopal

General Counsel, Tata Technologies

Anjali Balagopal is the General Counsel at Tata Technologies Limited (TTL) which is a global engineering and product development digital services company with a workforce of 10,000 employees worldwide and founded in 1989. She is responsible for overall legal and compliance at TTL and is also a part of the executive leadership team.

She brings more than 18 years of experience in the legal space. Previously she has worked with Infosys and Juris Corp. Her significant achievements include being ranked among the 100 most Powerful Women in Law in India, Best Leading Lawyers 2022 – WIPF and Powerful Indian Women in IP 2021 – WIPF.

Anupama Pai

Head Legal, Bharat Serums

Anupama Pai is a dedicated Legal and CS professional with 23+years' experience in advising on various legal and regulatory matters. She is currently Head – Legal & Company Secretary at Bharat Serums and Vaccines Limited, a bio-tech company in India. She has been handling litigation, non-litigation, corporate secretarial, IPR matters, policy drafting and investigations, merger & acquisitions and corporate re-structuring, implementation of compliance management tools, e-modules for legal compliance policies, digitalization of some of the functions within Legal.

During her stint at WNS and ICICI Bank, she has handled NYSE listing, buyback, and entity-wise restructuring projects, IPR matters, M&A and also for a brief period the compliance function. She has also expertise in Corporate Governance, FPO Management, Debenture issues, Buy-back under USSEC and SEBI Regulations.

Archana Balasubramanian

Founding Partner, Agama Law Associates

Archana is the Founding Partner of Agama Law Associates ("Agama"). Archana, has versatile experience of over 13 years wherein she has gained immense tactical transactional understanding as well as significant industry expertise across diverse sectors such as manufacturing, logistics, media, pharmaceuticals, financial services, shipping, real estate, technology, engineering, infrastructure and health.

Presently, Archana is catering through Agama to Listed / Unlisted enterprises, mid-sized firms and also Start-Ups. Archana advises her clients across a whole gamut of transactions essential for the functioning of any organization in the economic-legal environment. She has successfully advised organizations in relation to standardization and negotiation of documents, statutory compliance advisory including employment advisory, corporate advisory, advise on compliance with Companies Act, foreign exchange laws as well as SEBI laws.

Arpita Sen

Associate General Counsel, Head Business Legal,
Intel India

Arpita has over 25 years of experience as an Attorney and over 20 years of experience as a designated General Counsel, Compliance Officer. She has held leadership positions as a trusted management advisor with required leadership skills for heading and managing a corporate legal, compliance and ethics function as also managing inter-company legal relationships. She also has expertise in providing strategic and practical legal advise, providing suitable legal options best suited for business/commercial strategy, being a trusted advisor, problem solver.

Recently in 2021-2022, she led a USD 1.2 Billion divestiture of healthcare services of an Indian public listed company including appointing Big 5 counsel across 4 geos, heading the entire reliance based legal DD for the org, negotiating and finalizing transaction documents and disclosures in a complex asset cum stock transfer deal. The List Co had upwards of 20 subsidiaries across the world.

Avaantika Kakkar

Partner, Cyril Amarchand Mangaldas

Avaantika is one of the most highly experienced antitrust advisors in India. She advises on complex merger notifications and represents her clients before the Commission, the Appellate Tribunal and Courts. Her practice includes providing strategic advise to her clients including objecting to certain mergers before the CCI.

Her experience in corporate and securities laws, transactional work in M&A, private equity, joint ventures, and structured finance, equips her uniquely to advise clients on merger regulation. She was among the first Indian lawyers to start practising Indian Competition Law in 2009, when the law came into effect. She was appointed on a working group, set up by the Competition Law Review Committee (established by the Ministry of Corporate Affairs in India to review the competition law regime to promote best practices). She works closely with the regulator as a non-government advisor.

Bindu Janardhanan

Registered Foreign Lawyer, Squire Patton Boggs
Singapore LLP

Bindu has over 10 years' of extensive experience in leading wide spectrum cross-border business and commercial litigation, product liability and legal compliance. Her practice covers diverse corporate commercial litigation, arbitration and alternative dispute resolution.

She also advises and acts for clients in global product liability litigations in Asia Pacific region, insolvency proceedings, constitutional law litigations, corporate and forensic investigations. Her primary focus currently is on product liability, particularly in the areas of prevention and defense of class/collective actions in the Asia Pacific region. She also has sufficient experience in responding to banking and intellectual property matters in Hong Kong and India.

Brijita Prakash

Partner, DSK Legal

Brijita's primary practice area is property laws. She has been involved in undertaking title due diligence, negotiating and drafting real estate transaction documents including agreements for sale, general powers of attorney, lease agreement, lease deeds, sale deeds, gift deeds, wills, memorandum of association and bye-laws for formation of association & societies, project development & management agreements, contractor's agreements, memorandum of understandings and maintenance agreements.

In the solar energy sector, she has been involved in advising the clients in procuring the permissions and approvals required from the Karnataka renewable energy department, various government authorities & agencies including Karnataka Power Corporation Limited and revenue department in setting up of solar power projects in the state of Karnataka and drafting of various transactional documents including co-ordination agreements, power purchase agreements, sale agreements, general powers of attorney, sale deeds, etc.

Deepali Chandhoke
Partner, DSK Legal

Deepali holds a vast and substantial experience in the practice of law since 1992. She is a seasoned litigating lawyer with a wide array of matters including civil disputes, arbitration claims, consumer disputes, matrimonial issues and is a pioneer in leading evidence, conducting trials, addressing final arguments and advising on issues relating to the prevention of sexual harassment at the workplace.

Deepali is also engaged as an independent member on Internal Committees for various multinational corporations and has concluded several inquiries into sexual harassment complaints. She conducts inquiries into complaints of workplace harassment as well as inquiries into performance failure/lapse of employee(s) in following organizational due process and/or implementing workplace policies. Her trial court experience is an asset in ensuring due compliance with applicable principles of natural justice and due process.

Deepa Krishnamurthy
Vice President Legal, NTT Data Services

Deepa is a strong woman leader and an exceptional legal professional, having executed strategic and leadership roles over the last several years. Over the span of her career, Deepa has dabbled in many roles within Legal & Compliance across Retail, Banking and IT Outsourcing industries.

She has over 18 years' experience as In-House counsel and has worked with several large corporates including, HSBC, Target, Dell and NTT DATA Services. Her areas of expertise include commercial contracting and deal support, compliance, employment, litigation and dispute resolution, procurement, and real estate. Deepa is a committed leader who leads with empathy. She has a genuine interest in the development of her people and a neverwavering focus on the quality of legal advisory.

Evneet Kaur Uppal
Associate Partner – Litigation, P&A Law Offices

Evneet is an Associate Partner in the Dispute Resolution Practice at P&A Law Offices. She has significant experience in commercial matters, civil disputes, arbitration, energy sector litigation and securities litigation.
Evneet has successfully represented several Indian and foreign companies (including government-owned companies) in commercial arbitrations, and in corporate tax, indirect taxation, competition, real estate and white-collar crime matters, before the Supreme Court of India, the High Court of Delhi, the National Company Law Tribunal (NCLT), the Debt Recovery Tribunal (DRT), the National Consumer Disputes Redressal Commission (NCDRC), the Telecom Disputes Settlement and Appellate Tribunal (TDSAT), among other fora. Evneet also provides regulatory compliance advise to the Firm's international clients, including advise on sexual harassment issues and anti-bribery matters.

Gauri Rao
Former Global General Counsel, Tata Consumer Products

Gauri is a senior strategic legal advisor. Till June 2022, she was the Global General Counsel at Tata Consumer Products Limited, a public listed FMCG company with over 3,000 employees and operations spread across the globe, including in India, UK, Canada, USA, Australia and Africa.

Prior to this, she was an Assistant Vice President (Legal) at Tata Sons Private Limited for 4 years, the principal investment holding company and promoter of the Tata Group. She has over 17 years of experience with the Tata Group and with leading international and Indian law firms (Herbert Smith Freehills LLP, London and Shardul Amarchand Mangaldas, New Delhi). Gauri is an expert in mergers and acquisitions, financings and bond issuances, governance-related issues and managing disputes. She is currently working on setting up Bridge-it, an online Edtech platform to improve spoken English fluency for students without access to English speakers within their networks.

Gowri Tirumurti

Partner And Head Of Trademarks Exports, Anand & Anand

Gowri Tirumurti is currently Partner and Head (Trademark Exports) at Anand and Anand and overseas Trademark related matters including filings, prosecution, searches, opinions, oppositions, cancellations in India and in jurisdictions outside India. She was enrolled in the Delhi Bar Council in 1991 and her experience includes:

With respect to Trademarks, she focuses on Portfolio management, prosecution before Trademarks Registry, including filing and defending Oppositions, filing responses to Examination reports & compliances and filing renewals.

During the period 2014 to 2018, Gowri was based in Kuala Lumpur, Malaysia, during which time, she worked for Shearn Delamore, a leading Malaysian Law Firm.

She was co-author of an article which was published in World Trademark Review along with Mr. M.S. Bharath, Partner and Lead Practitioner, Anand & Anand, Chennai.

Gunjan Shah

Partner, Shardul Amarchand Mangaldas & Company

Gunjan Shah is a Partner and serves on the Management Committee of the Firm. She specializes in General Corporate, Capital Markets and Banking & Finance. Her areas of expertise include Mergers & Acquisition, Private Equity Corporate Restructuring, Debt Restructuring, Debt Capital Markets, and Securities and Takeover Regulation in India.

In 2019, FT Innovative Lawyers 2019, Asia Pacific Awards, awarded her transaction, AION and JSW's acquisition of Monnet Ispat & Energy Limited on innovation in legal expertise. Gunjan has also been recognized by Asia One among 50 most influential Indians under 50 – 2016-17 and in March 2015, was acknowledged in the list of India's Hottest Young Executives - 2015, Business Today's ninth listing of the best and the brightest corporate performers under 40. Gunjan has been recognised as one of India's top 40 business leaders under the age of 40 by the Economic Times – Spencer Stuart Survey, 2014. She is a fellow of the Aspen Global Network– Kamalnayan Bajaj Fellowship and has held a number of positions on legal panels and forums and is a judge at the Oxford-Price Media moot court competition held in Oxford, UK.

Jyoti Maheshwari

Senior Vice President – Legal,
Hitachi Payment Services Pvt. Ltd

Jyoti has 20 years of extensive experience in Mergers & Acquisitions, General Corporate Commercial, Infrastructure, Structured Finance, ECB, FDI, etc. She has advised various infrastructure companies in the field of water to energy plants, solar power, construction companies etc, with respect to EPC Contracts, turnkey contracts.

She has assisted the authority to draft and publish RFP/RFQ/Tenders with respect to infrastructure projects. Negotiated for various companies on the Concession agreements, EPC contracts, etc. She has also advised offshore and domestic private equity funds on all aspects of an investment and has represented them in structuring of the investment instruments including but not limited advised on investor rights, exit options, waterfall mechanism and regulatory issues in the real estate, financial services and infrastructure sector in terms of the Foreign Direct Investment Policy of India and the Reserve Bank of India Guidelines.

Kaadambari

Managing Director, UCOL (United Chambers Of Law)

An alumna of the prestigious LSR College, Delhi and the Faculty of Law, University of Delhi, Kaadambari began her career as a litigator in 1998. Kaadambari is currently the Standing Counsel, National Highway Authority of India; Additional Standing Counsel, New Delhi Municipal Council; Senior Counsel with the Ministry of Law & Justice (Union of India). In the past, besides various multinationals, including a few Fortune 500 companies, she has also represented the Indian Air Force, State of Haryana, Punjab State Electricity Board, Haryana State Industrial & Infrastructure Development Corporation, CCS-HAU University (Hisar) amongst others, where she has argued complex and significant matters of public importance with considerable success.

As a lead counsel, Kaadambari has been at the forefront of some of the top draw high value litigations (INR 500-1000 crores) and have successfully argued cases which have contributed to the development of legal precedents across different judicial fora, from the Supreme Court of India to various High Courts and Appellate Tribunals. Most recently in 2021, she has been honored by the India Forbes "Legal Powerlist 2020" as India's Top Individual Lawyer for excellence in law.

Kanisha Vora

Partner, Veritas Legal

Kanisha Vora has over ten years of experience and focuses on matters relating to Mergers & Acquisitions, Private Equity, General Corporate Advisory, and our ESG vertical at the firm. She has advised various domestic and international clients in acquisition, investment and joint venture transactions across different industries and sectors in India. Her noteworthy experience includes working on Mergers & Acquisitions, Private Equity & Venture Capital and Joint Ventures.

She has also worked on the transaction related to Aditya Birla Conglomerate (RKN Retail Private Limited and Kanishtha Finance and Investment Private Limited) in relation to the transfer of their majority shares in Aditya Birla Retail Limited to Witzig Advisory Services Private Limited for an enterprise value of approximately US$ 573 million.

Lakshmidevi Somanath

Head, Intellectual Property Practice, Surana & Surana International Attorneys

An alumnus of the National Law School of India University, Bangalore and a Gold Medalist in her LLM, she was appointed as a judge of the Intellectual Property Appellate Board (Technical Member-Trademarks) and adjudicated in numerous cases on several key trademark law issues. Her orders ranged from declaring GOODDAY to be a well known trademark, to deciding in favor of RPG, HP, REDBULL and several famous trademarks.

Enrolled in 2002 and practised intellectual property laws for 18 years, mainly before the High Court of Madras and also various other courts and tribunals. She has been arguing counsel in hundreds of cases concerning significant jurisprudential questions in intellectual property law, with over 200 reported cases to her name. She also filed and prosecuted many applications before the Indian Trademark, Design and Copyright Offices and coordinated the filing of trademarks and patents in various countries worldwide including USA, UK, EU, Japan, Singapore, GCC countries, and PCT patents. Co-authored the book 'MANUAL OF CYBER LAWS', by Aditya Book Company (ABC), July 2010, and is a regular contributor to various legal publications and journals.

Madhu Gadodia

Deputy Managing Partner, Naik Naik & Co.

Madhu Gadodia is a Deputy Managing Partner at Naik Naik & Co. With a wealth of experience and knowledge in this field, Madhu's focus areas are Technology, Media & Telecommunication (TMT), Banking & Finance, Non-Banking Financial Companies (NBFCs), Indian Bankruptcy Code, Intellectual Property Rights (IPR), Nonconventional Media Practice (like Digital Platforms) and Debt Recovery.

Madhu counsels on Banking & Finance issues at the Firm and represents the reputed Financial Institutions and Non-Banking Financial Companies (NBFCs). She has also handled some of the largest claims in Debt Recovery matters which also gave her deeper insight into her career. Presently, she is handling the segments under the Indian Bankruptcy Code (IBC). Madhu carries extensive experience and has also represented the Indian Broadcasting Federation, as well as the associations of television and film producers including IFTPC and IMPAA. Madhu has also represented a leading broadcaster before TDSAT in its dispute with the distributor and Indian Broadcasting Federation regarding the issue of certain provisions of the Copyright Act, 1957, and amendments thereafter.

Malyashree Sridharan

Associate Partner, Lexorbis

Malyashree is an experienced professional with specialized skills in handling matters related to Intellectual Property Rights. Vast experience in handling both contentious and non-contentious trademark issues, IP enforcement and infringement, IP due diligence, advising clients on various IP-related issues.

She advises clients on legal queries pertaining to Trademarks, Copyrights, Designs, Company Disputes etc. She also drafts Oppositions, Counter-Statements, Evidence in support of oppositions/applications and rectifications in relation to Trademarks and attending hearings before the Registrar of Trademarks, IPAB etc.

Mamta Jha

Senior Partner and Head of Litigation, Inttl Advocare

Mamta Jha is a practising lawyer with over 18 years of experience in litigation, with expertise in Intellectual Property laws. She currently heads the litigation practice and is a Partner at Inttl Advocare. She has also considerable experience in the allied and emerging fields of Information Technology, Telecommunications, Media and Anti-Trust Laws. Her past experience of over 7 years in both civil and criminal litigation has equipped her with a unique approach towards addressing complex issues and providing holistic solutions. Apart from litigation, Mamta actively advises clients on IP licensing, auditing, contract drafting and negotiation, business venture evaluation and due diligence, online and offline anti-counterfeiting and border control measures and regulatory compliances.

Mamta has represented leading global pharmaceutical companies, as well as electronic and telecommunication giants in key patent litigation cases. She has also successfully handled trademark and design litigation for Fortune 500 companies across various sectors and advised clients on contentious matters pertaining to copyright law.

Meenakshi Acharya

Founder Partner, RMA Legal, Advocates & Solicitors

Meenakshi completed her Law from Kishinchand Chellaram Law College, Mumbai in 2008. She has versatile experience in mergers & acquisitions, private equity and investments, foreign investments policies (FEMA), corporate & commercial transactions; capital market, ecommerce, real estate, infrastructure, employment & labor matters.

Meenakshi's experience in working with top law firms of India like the AZB & Partners, Thakker & Thakker, ARA Law, and Singhania & Co., has helped her to guide RMA Legal to its current position in the market. Over 14 years in the legal industry, Meenakshi's experience includes: Structuring of foreign investment in light of the Foreign Exchange Management Act, 1999 (FEMA), conducting due diligence on potential investment targets, conducting due diligences & preparing DD Reports including advising clients in relation to transactional documentation, pre and post investment restructuring as well as statutory compliances.

Mumtaz Bhalla

Partner, Economic Laws Practice

Mumtaz has about 14 years of experience in the field of litigation and dispute resolution. She specializes in Domestic and International Arbitrations. She has considerable amount of experience in the aviation sector, medical sector, real estate, construction, and civil-commercial sector, with her being the preferred choice for several domestic and international clients. She also possesses a wide range of experience in civil trial, criminal trial, appeals, consumer disputes, domestic and international arbitration. She also specializes in conducting compliance workshops for Companies. She is Advocate on Record, Supreme Court of India and the member of Advocate on Record Association, Supreme Court of India, International Bar Association, Supreme Court Bar Association, Delhi High Court Bar Association and New Delhi Bar Association.

She has advised and represented several multi-national companies and organizations regarding appropriate strategies to be adopted at various stages of litigation and arbitration. She is liked by her clients for providing them with effective and quick solutions for every issue.

Namita Chadha

Founder and Managing Partner, Chadha & Co.

Namita is the Founder and Managing Partner of Chadha & Co. She is a lawyer with 30 years of experience in corporate and commercial laws. Her areas of expertise include Multijurisdictional Litigation and Dispute Resolution, Mergers and Acquisitions, Regulatory, Competition Law, White-Collar Crime and Commercial Fraud, Labour & Employment, Infrastructure and Anti-Bribery. She advises leading multinationals doing business in India on diverse matters. She brings to the table expertise flowing from a fusion of skill-sets drawn from her experience as a General Counsel and rich corporate experience of the law firm for providing efficient legal solutions to the businesses which her Firm advises. Namita has been awarded as 'Woman lawyer of the year 2014' by Legal Era, India and 'Leading Lawyer' by Asialaw, continuously for 5 years.

Namita began her professional career in 1993 in the Supreme Court of India, where she worked on diverse areas of civil, commercial and contractual laws with an emphasis on issues of constitutional and environmental laws and public interest litigation. She served as a counsel to Broken Hill Propriety a leading Australian multinational, where she advised its joint venture with Kinhill (now known as Kellogg Brown Roots) on contract negotiations with Paradip Port Trust for an ADB funded Tamil Nadu highways project of 480 kms and also on matters in the real estate arena. Thereafter, she joined a corporate and commercial law firm, where she gained extensive experience in advising Fortune 500 Japanese and American clients on insurance laws, anti-trust laws, privatization and disinvestment, licensing and franchising and joint ventures and technical collaborations.

Natasha Treasurywala

Partner, Desai & Diwanji

Natasha's practice includes a wide range of transactions including structured financing, mergers and acquisitions, joint ventures and general corporate law. She regularly advises commercial and investment banks, financial institutions, private equity sponsors and borrowers in connection with secured and unsecured credit facilities, cross-border acquisition financings with a particular focus on non-convertible debenture and bond issues (both listed and unlisted). Closely involved in all aspects of deal structure, negotiation and documentation, her record of accomplishment is testament to her commitment to helping clients to achieve their goals. Drawing on her knowledge of the sector, she has helped numerous clients to navigate the intricacies of large-scale and multijurisdictional deals. Recently, she has worked on various transactions that include advising the Shapoorji Pallonji Group on their exit from the one-time restructuring (OTR) exercise (India's largest) by repaying their lenders ₹12,450 crores; advising the promoters of Eureka Forbes Limited on a stake sale to Advent International for ₹4,400 crores; advising the promoters of Hemmo Pharmaceuticals on a 100% stake sale to Piramal Pharma for ₹775 crores; advising the promoters of Sterling & Wilson Solar Limited on a stake sale to Reliance Industries for ₹2845 crores; advising the Shapoorji Pallonji Group on raising approximately ₹8000 crore from Ares SSG and Farallon Capital; advising Forbes & Company Limited the promoters of Forbes Facility Services on a 100% stake sale to Norwest backed Sila Group for ₹42 crores; advising the promoters of Allyis Inc. on a 100% stake sale to Tech Mahindra Limited for ₹900 crores amongst others.

Nupur Maithani

Partner, Anand & Anand

Nupur is a patent lawyer practising in the fields of biotechnology, immunology, cell and molecular biology, biochemistry, microbiology, genetics, pharmaceuticals, chemistry, food technology, nutraceuticals and other allied areas. She has expertise in patent protection and enforcement. She provides strategic counseling in patent drafting, filing, prosecution and in contentious patent matters. Her considerable experience in patent infringement suits and invalidity actions provides the perspective for robust prosecution.

She is also involved in patent search and analysis including freedom to operate, validity, patentability and infringement analysis and advises clients on biodiversity and traditional knowledge issues. She is extensively involved in pre-grant and post-grant contentious patent matters and regularly appears before the Indian Patent Office. She has actively represented innovators in several pre-grant oppositions, post-grant oppositions and revocations.

Preethi Kitchappan

Head Legal, TVS Supply Chain Solutions Ltd

Preethi Kitchappan is currently with TVS Supply Chain Solutions as their Head – Legal. Preethi Kitchappan through her diverse calling brings with her practical IPR finesse and knowledge and varied expertise in handling matters pertaining to due diligence, IPR, merger and acquisitions, JV deals, real estate, data protection, litigation/dispute management etc.

Preethi is a law graduate from the University of Southampton, England. She is a seasoned legal professional having a specialization master's degree in commercial law and international trade. Preethi has served as an in-house counsel in London and in India with over 15 years of experience having been associated with leading organizations in the service industry, holding various leadership roles. Preethi has been associated with organizations like Cognizant where she was the country lead counsel/head for legal operations for Australia and New Zealand jurisdiction. She also has Fintech in-house practice and has served FSS a global fintech product company for more than 8 years heading legal for their Retail Payments and FSS Prime businesses for both India and overseas. She was part of their leadership team playing an advisory role for all legal requirements.

Puja Sondhi

Partner, Shardul Amarchand Mangaldas & Company

Puja Sondhi s a leading advisor with expertise in foreign investment and regulatory affairs, India market-entry strategy, joint ventures, mergers & acquisitions, private equity investments, PIPE deals, public M&A, venture capital, and corporate restructuring. Puja has successfully closed numerous complex, path-breaking and award-winning transactions requiring innovative structuring, regulatory expertise and a solution-oriented approach across diverse sectors.

Puja has developed a strong "emerging companies" practice, focused on growth capital, spanning a broad range of new-age businesses including inter alia retail & e-commerce, digital media, e-pharmacy, online gaming, mobility solutions, fintech, lifestyle & health. Puja has advised extensively on both founder/company mandates and investor mandates for fundraising from marquee investors including inter alia International Finance Corporation (IFC), Norwest Venture Partners (NVP), Softbank, SAIF Partners, Tiger Global, Raine group and Qatar-based QInvest.

Rashi Suri

Managing Partner, Upscale Legal

Rashi Anand Suri, has been an integral part of various leading law firms of the country and business houses and has over 20 years of experience. Rashi has assisted the Planning Commission as a Legal Consultant to the Secretariat of Infrastructure. She has also been involved in the preparation of bid documents including the RFQ as well as the RFP on a PPP basis.

Rashi has been appointed as a Legal Consultant to the National Highways Authority of India on several projects and has advised Planning Commissions and the NHAI in preparation of bidding documents for highways projects on BOT/DBFOT/Annuity basis, evaluation of bids submitted by bidders and other legal issues related therewith.
Rashi has a vast experience in other facets of corporate and commercial laws including foreign direct investment and documentation concerning shareholders and joint venture agreements and various M&A transactions. Ms. Suri has vast expertise on maintaining corporate compliance and drafting of documents integral to the business of its clients. Ms. Suri has experience in preparation, drafting, review and active involvement in the consultation process with stakeholders.

Reeba Chacko

Partner, Cyril Amarchand Mangaldas

Reeba has represented several leading global private equity funds, as well as large Indian corporates in her areas of expertise. Her transactional experience ranges across various sectors including real estate and infrastructure, pharmaceuticals and healthcare, technology, retail and ecommerce, financial services and education.

Chambers and Partners 2022 has ranked Reeba as a Band 1 Lawyer for Corporate and M&A and Private Equity in India. IFLR1000 2022 has recognized him as Highly Regarded for M&A. Asia Law 2022 has described him as Distinguished Practitioner for M&A. Legal Era Leading Lawyer 2022 ranked him as “Leading Lawyer Legend” for Private Equity and Corporate and M&A.

She has been recognized as IFLR1000 Women Leaders 2021 & 2022 and recommended by Who’s Who Legal Thought Leaders India as Global Leader M&A 2021.

Rohini Karol

Associate Partner – Corporate, P&A Law Offices

Rohini has over 13 years of experience in corporate laws with a specific focus on capital markets. Rohini has worked on numerous IPOs, QIPs and Rights Issues in both the private and public sector. She has wide experience in conducting due diligence, drafting offer documents filed with SEBI and various stock exchanges, and ensuring compliances with SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 and other applicable laws, appearing before SEBI Officials and making submissions on a case-to-case basis.

Rohini also has significant experience in litigation, M&As and general corporate advisory.

Rohini has acted on Initial Public Offerings for clients including, Apollo Micro Systems Limited, Ircon International Limited, K.P.R. Agrochem Limited, Route Mobile Limited, Hinduja Leyland Finance Limited (for selling shareholder), Advanced Enzyme Technologies Limited and Numero Uno Clothing Limited. She has also acted on Qualified Institutions Placement for clients including, Premier Explosives Limited, Nath Bio-Genes (India) Limited, United Bank of India, Dena Bank, Bank of Maharashtra, Syndicate Bank, NCL Industries Limited, Talwalkars Better Value Fitness Ltd and Elder Pharmaceuticals Limited.

Ruchika Nayyar

General Counsel, Nexus Malls

Ruchika Nayyar is a distinguished legal professional with around three decades of experience in handling wide range of legal and regulatory issues. Currently she is the General Counsel for the Nexus Malls, which is a part of US-based Blackstone Group and is responsible for overseeing the Legal & Secretarial function across the Group. She is spearheading the Nexus Group and is instrumental in advising the Group on various legal matters, strategizing the legal actions, development of system and processes for the business. Prior to joining Nexus Malls, she was working with the GMR Group as the Vice President & Head - Corporate Legal.

She specializes in and has wide and well-rounded expertise in Retail Real Estate, Project Finance & Infrastructure funding, Real Estate Financing, M&A, Corporate matters, General and Commercial Laws, Property matters, Litigation and Dispute Resolution matters. She has played lead role in transactions involving structuring, divestments, joint ventures, mergers, banking and financing (debt and equity), involving multi-jurisdictional parties.

Seema Jhingan

Co-Founding Partner, Lexcounsel, Law Offices

Seema has substantial expertise in representing investors, developers, venture capital and private equity funds, international corporations, sponsors/lenders and other strategic investors involved in the establishment, development and financing of infrastructure, telecom, education, information technology and satellite projects in India.

Seema is recognized for her capability of structuring innovative investment models and has considerable transactional experience in representing private equity and venture capital funds and investors such as Providence Equity, Gaja Capital, Kaizen's portfolio company, LeapStart Trust, Bedrock Ventures, on investment structuring and exits, collaborations & funding, legal due diligence & compliances, shareholders & minority protection issues, escrow arrangements, tax structuring, foreign investment and regulatory/licensing issues including SEBI registration as a VC fund, FIPB approval and other exchange control related issues.

Shalinee Kulshreshtha

General Counsel - South Asia, Dentsu International India

Shalinee is the General Counsel, Compliance officer, member of South Asia leadership team and a director on Board with Dentsu International India having 20+ years of experience in chemicals, agro-sciences, food, technology, consultancy, telecom, aerospace, education and media industries, driven to control costs, manage risk, add value, lead complex transactions and collaborate with organizational leaders to effectively align with and support key business initiatives.

As part of Global Legal team, she is responsible for South Asia, for managing major/complex programs/ cross-border transactions. She has also advised cross-functional teams on a broad range of legal subjects including corporate, commercial, intellectual property rights, employment, data protection, company ethics and regulatory matters ensuring informed decision-making pertinent to strategic as well as tactical business plans. She provides overall counsel, leadership, and management in facilitating strategically important corporate initiatives such as demergers, acquisitions and strategic alliances.

Shilpa Bhasin Mehra

Legal Consultant & CEO, Virtuous Middle East

Shilpa is the founder of Legal Connect, which delivers practical solutions to diverse legal situations and is also the author of 'All Battles Aren't Legal', which has been read and reviewed by noted Indians like Sonia Gandhi, Mukesh Ambani and Dr. Karan Singh. After finishing studies, she worked in India for a year under the mentorship of India's leading law legend Mr. K. K. Venugopal. At the end of February 2003, Shilpa was struck by viral meningitis and slipped into coma for 40 days and was admitted in a hospital in Dubai. Shilpa opened her eyes in April 2003. After her condition became stable on April 15, she was flown to Apollo Hospital, New Delhi where she remained under treatment for six months.

Her father, Lalit Bhasin (an eminent lawyer), got her a laptop to the hospital so that Shilpa could keep herself occupied. She started writing a few pages, a personal diary of sorts. She mailed the draft to her father asking him to get a printout. He read it and wanted to get it published. So he forwarded it to the publishers who liked it and published it without even putting a comma saying that would kill the authenticity of the story. The book was ready to be published but as the publishers were a leading law publishing house in India they needed a legal title.

The publisher liked the book and suggested the need for a legal title. Being amused by his demand and thought, Shilpa randomly told him 'All Battles Aren't Legal'. The publisher liked it and decided to use it as the title.

Sreemoyee Deb

Partner, P&A Law Offices

Sreemoyee's practice focuses on anti-competitive agreements, abuse of dominance and merger control notification matters, both in India and the EU. Sreemoyee has advised clients across industries, including those from the television content and distribution business, steel industry, technology industry, on matters relating to anti-competitive agreements, abuse of dominance, merger control and FRAND commitments. She has represented clients before the Competition Commission of India, the Competition Appellate Tribunal, the National Company Law Appellate Tribunal, the High Courts of Delhi, Bombay and Karnataka, and the Supreme Court of India. She has also conducted comprehensive competition law compliance training programs for various corporates and has the distinction of being involved in filing the first leniency application in India before the Competition Commission of India. She has also notified several M&A transactions to the CCI and has been successful in obtaining unconditional approvals for each transaction.

Suchita Saigal

General Counsel, Cleantech Solar

Suchita is the General Counsel for India and south-east Asia at Cleantech Solar which she joined in 2021 as the Assistant General Counsel (India). In November 2021, she was promoted to the acting General Counsel for India and south-east Asia and in March 2022, she was appointed as the full-time General Counsel of the organization. Suchita has 13+ years of experience working in top tier law firms in India and overseas, and in multinational organizations with operations in India and south-east Asia.

After having graduated in 2009, she joined Clifford Chance, London, as a trainee lawyer. As an associate, she qualified into their London-based Energy and Infrastructure practice. On relocating to India, she was part of Sumanto Basu's team in JSA and with the Trilegal's Delhi-based projects team. She moved in-house in 2016 and joined the Apraava Energy (formerly known as CLP India) legal team.

Her expertise lies in the renewable energy sector. She has advised on the full spectrum of matters within the sector, ranging from project development, project financing, M&A, transaction structuring to litigation.

Sudipta Ghosh

General Counsel, Apraava Energy Private Limited

As a part of the leadership team of Apraava (previously known as CLP India) and as the general counsel of the Apraava Group, Sudipta is actively involved in advising the company on various legal aspects of setting up greenfield conventional and renewable power projects including transmission assets, and M&A transactions especially in relation to the acquisition of power projects. She works closely with the management to establish business terms, identify legal issues and decide what type and level of risk is acceptable.

Sudipta leads a team of young and dynamic lawyers who possess a perfect blend of in-house and private practice experience. She joined Apraava in 2009 as an assistant legal counsel and since then she has grown with the organization. In 2017, Sudipta was appointed the general counsel for the Apraava Group. Prior to this, she has worked with two prestigious law firms – Trilegal and Cyril Amarchand Mangaldas (previously known as Amarchand Mangaldas Suresh A Shroff & Associates), where she handled various domestic and international financing for infrastructure projects including the financing for power projects and airports.

Competition Law, Regulation, and Practice

In The Current E-Commerce, Digital-First, And Global M&A Times — Future-First Insights From Competition Lawyers

An exclusive feature capturing the viewpoints of competition law experts on the intersection of the law and the booming digital platforms and new age markets presenting incredible opportunities and decisive challenges for the Regulator and Competition Lawyers

The Indian digital economy, even as it is nascent, is at the cusp of innovation and scale. E-commerce and digital payments sectors have witnessed exponential growth. The Government is actively promoting greater access to economic markets through initiatives such as Digital India. That has resulted in the creation of digital public goods with state support, disrupting traditionally operating markets such as the Unified Payments Interface (UPI) and the upcoming much-touted Open Network for Digital Commerce (ONDC).

With such growth arose enhanced regulatory attention and competition law enforcement. The past year has seen an accelerated scrutiny of the digital economy. The anti-trust authority, the Competition Commission of India (CCI) is playing a decisive role in determining the course of the tech scrutiny in India. Various committees of the Parliament dealing with digital transformation of businesses have sought representations from market participants in the domestic and international digital economy.

In that context, India's competition law and regulation and its interaction with the digital-first developments has become a pertinent conversation towards the country's growth at the global stage. A recent step in that direction has been the wide-ranging Competition (Amendment) Bill, 2022, proposing many substantive, procedural, and institutional changes. But before deep dive into the Bill, let's look at the many facets of the country's chief regulator's incredible role in the past few years.

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TOP 10 ANTITRUST AND COMPETITION LAWYERS OF INDIA

Anand Pathak
Managing Partner
P&A Law Offices

Pallavi Shroff
Managing Partner
Shardul Amarchand Mangaldas & Co.

Vinod Dhall
Sr. Advisor
Touchstone Partners

Manas Kumar Chaudhuri
Partner
Khaitan & Co LLP

Karan S. Chandhiok
Partner (Head-Competition Law
Chandhiok & Mahajan

Nisha Kaur Uberoi
Partner
Trilegal

Shweta Shroff Chopra
Partner
Shardul Amarchand Mangaldas & Co

Avaantika Kakkar
Partner (Head-Competition Law)
Cyril Amarchand Mangaldas

Harman Singh Sandhu
Partner
Shardul Amarchand Mangaldas & Co

Abdullah Hussain
Partner
DSK Legal

MANAS KUMAR CHAUDHURI

Partner and Head of Competition Law Practice Group, Khaitan & Co LLP

The Competition Commission of India holds the torchlight for Indian and global businesses.

Introducing online hearings and consultations via a Standard Operating Procedure (SOP)

Manas Kumar Chaudhuri, Partner and Head of Competition Law Practice Group, Khaitan & Co LLP believes that the CCI met the challenges of the pandemic well by introducing online hearings and consultations via a Standard Operating Procedure (SOP) introduced as early as 06 October, 2020. As a result, even though the new normal appears to continue for some more time, that is not a problem. Anand Pathak, Managing Partner, P&A Law Offices recognizes that while the global COVID-19 pandemic set up many operational challenges for law firms and the industry, in general, they are all learning and adapting to a more virtual work environment. Court proceedings remain largely virtual and filings have become predominantly electronic.

Successfully assessing global merger control filings and domestic filings

Manas Kumar Chaudhuri, Partner and Head of Competition Law Practice Group, Khaitan & Co LLP affirms that the CCI has successfully assessed global and domestic merger filings and closed them with unconditional approval orders (98%).

Mantle of enforcement not only in the cartel space but also in merger regulation

Abdullah Hussain, Partner – Competition Law, DSK Legal makes a passionate case. After a sluggish 2020, the CCI has taken up the mantle of enforcement with renewed vigor from 2021 onwards in the cartel space and in merger regulation, with several gun-jumping orders over the last 6-7 months. He highlights that the CCI has conducted several raids this year itself. We can expect similar vigorous enforcement ahead.

All in all, the Competition Commission has done remarkably well with increasing depth in knowledge and application, which is evident from its analysis both in enforcement and merger regulation. The High Courts and the Supreme Court have also passed significant orders during this period, strengthening the powers of the Commission and understanding of the law.

On a similar note, **Anand Pathak**, Managing Partner, P&A Law Offices agrees that in the last decade, the competition regime in India has evolved and adapted to the emerging issues and markets. The Commission has been able to address competition concerns in new-age markets through sector studies and/or investigations directed against major digital platforms and e-commerce players - all under existing law.

Enabling business and innovation by ensuring regulatory intervention is not disproportionate

To the CCI's credit, **Nisha Kaur Uberoi**, Partner & National Head Competition Law, Trilegal applauds the Commission for adopting a balanced approach in ordering investigations into purportedly anti-competitive practices. The CCI has not intervened immediately in the digital markets by providing interim relief, barring one instance in the case of Oyo/Makemytrip, therefore, not stifling innovation while investigations are underway.

Naturally, the CCI finds itself playing a decisive role in determining the course of the tech scrutiny in India that has initiated probes into the likes of Amazon, Google, Facebook, and WhatsApp and large indigenous digital market players.

ANAND PATHAK

Managing Partner, P&A Law Offices

The CCI has actively recognized new issues posed by the peculiarities of the digital world and has adopted new economic reasoning beyond those applied to traditional competition models, often after conducting in-depth consultations with the industry. Indeed, competition law regime has witnessed tremendous growth and development since its inception. The CCI has been an extremely proactive regulator – both in enforcement and merger control.

And in that context, it is relevant to consider how the highly anticipated Amendment Bill is likely to change the competition landscape substantially.

A snapshot of the developments preceding the introduction of the Bill

Manas Kumar Chaudhuri, Partner and Head of Competition Law Practice Group, Khaitan & Co LLP succinctly narrates the legislative history leading up to the Bill that is much in the discussion today. He explains that while the Competition Act came into being on 13 January, 2003, but due to a few Constitutional challenges before the High Court of Chennai (Madras) and later before the Supreme Court of India in August and October 2003 respectively, the enforcement of the Act was delayed by over six years. Comprehensive amendments were introduced by the Parliament post the decision of the Supreme Court in Jan 2005. The amended Act was finally notified in two tranches. First, prohibitory provisions of antitrust disputes were notified on 20 May, 2009. And second, the regulatory provisions of merger control were notified on 01 June, 2011.

During the 13 years of existence of the law, the adoption of continued public consultation processes by the CCI and a few landmark decisions of the Supreme Court of India enabled the Union of India to suggest yet another comprehensive amendment of the competition law.

As is the norm, there is always room for improvement, and the CLRC recommendations of 2019, followed by the proposed Amendment Bill of 2020 and now 2022, seek to address many of those areas.

The Competition Amendment Bill, 2022 seeking to amend the two-decade-old Competition Act was recently introduced in the Lok Sabha on 5 August 2022 for the monsoon session. The Bill seeks to introduce some key changes to the Indian competition law regime, with the objective of addressing competition issues posed by new-age, digital markets.

A Critical Analysis of the Bill's highlights

The Amendment Bill strengthens the Competition Act in line with global best practices.

Nisha Kaur Uberoi, Partner & National Head Competition Law, Trilegal welcomes the Bill bringing in some welcome pro-business changes. Those include accelerating the merger review timelines for phase 2 review, introducing settlements and commitment for vertical agreements and abuse of dominance to avoid protracted litigation, introducing penalty guidelines, etc. strengthening the Competition Act in line with global best practices.

She also highlights the introduction of the Leniency plus regime in line with international best practices. That will give a further fillip to the leniency regime and the long-awaited penalty guidelines providing certainty to the industry.

Ensuring predictability in the implementation of the Act with newer concepts akin to international best practices.

Manas Kumar Chaudhuri, Partner and Head of Competition Law Practice Group, Khaitan & Co LLP highlights Bill's key features that further the cause, effective implementation of the Competition Act. The waiting periods, both in the anti-trust and merger control, have been proposed to be reduced with reasonable newer concepts of "settlement" and "commitments" in anti-trust disputes in the area of enforcement. Additionally, the merger control would be fine-tuned in digital transactions once the Bill becomes law. A "deal value" threshold is proposed to be introduced for merger control space in respect of digital enterprises.

The transaction value threshold in the area of merger approval expands the CCI's jurisdiction

A new merger notification jurisdictional threshold, the "deal value threshold", has been introduced. It seeks to make a notifiable combination of any transaction where the deal value is above ₹2,000 Crores and parties have a substantial business interest in India. **Anand Pathak**, Managing Partner, P&A Law Offices explains that for the first time, "deal value" is being introduced into the notification threshold as an addition to the already existing notification thresholds based upon asset value and turnover. That will expand the jurisdiction of the CCI under the existing merger control regime and bring sophisticated transaction structures and new business models under scrutiny.

Allowing parties to offer commitments in ongoing investigations against anti-competitive vertical agreements and abuse of dominant position

Competition lawyers throw a spotlight on the Bill's proposal to allow parties to offer commitments in ongoing investigations against anti-competitive vertical agreements and abuse of dominant position. **Anand Pathak**, Managing Partner, P&A Law Offices shares that this is likely to enable the Commission and the concerned parties to work out solutions better suited to balance the incentive for innovation while preserving competition in dynamic and rapidly evolving markets.

The potential impact on the digital economy sector with a deal value threshold of ₹2000 crores

The Bill introduces a deal value threshold of ₹2000 crores which will cover direct, indirect, and deferred consideration. It is proposed to operate irrespective of the de minimis target exemption applies on a sector agnostic basis. The only safeguard is the entity should have substantial business operation in India - which will only be defined by the CCI by regulations. **Nisha Kaur Uberoi**, Partner & National Head Competition Law, Trilegal predicts that this could potentially impact the digital economy sector in particular (given acquisitions of small companies who are typically target exempt on account of low revenues) if the CCI were to adopt metrics similar to Austria and Germany in terms of a number of monthly active users for instance. Further, the CCI will need to ensure that the "substantial business operations" guardrail is not a size fit all approach and is customized basis the sectors it is seeking to review.

It is critical to ensure that the proposed value of the transaction test does not neutralize in entirety the de minimis exemption. It must not inadvertently result in capturing exempt combinations that have no impact on competition in India, thereby increasing the regulatory burden on industry and the CCI. The criteria that CCI will frame by way of regulations will be key to determining this. Otherwise, the CCI will unnecessarily receive merger filings that do not have local nexus to India - accordingly

NISHA KAUR UBEROI

Partner & National Head
Competition Law, Trilegal

prior consultation with the industry is a must prior to the proposed changes becoming law.

The tricky definition of eCommerce and digital companies as "enterprises" under the Competition Amendment Bill, 2020

The Competition Amendment Bill, 2020 is likely to be deliberated/passed in the Winter Session – is expected to open new opportunities and challenges to all stakeholders when it finally gets the nod of both the Houses. **Manas Kumar Chaudhuri**, Partner and Head of Competition Law Practice Group, Khaitan & Co LLP highlights that e-commerce and digital companies are "enterprises" within the ambit and scope of the Act. All jurisdictional challenges raised by parties against the CCI, in respect of the digital companies, were settled as the Hon'ble Supreme Court dismissed such challenges on merit.

However, the challenge to this sector is unique. Defining relevant products and geographic markets in this sector are not settled. Assessing competition within the vertical business relationship and/or algorithm-based collaboration amongst enterprises in this sector both within and beyond the sector, could be debatable. The determination of relevant markets, especially relating to multi-sided markets, may not be easy to assess and finally remedy market distortions if any. A debate is on amongst competition agencies with regard to disciplining this sector via an ex-ante process in contradiction to the ex post facto mandates of the respective antitrust laws. Many jurisdictions have already amended their respective competition legislation on this behalf. It, as of now, at best can be said to be a work-in-progress as most competition agencies agree that end consumers must not be harmed.

ABDULLAH HUSSAIN

Partner – Competition Law
DSK Legal

Unintended consequences of the proposed 25% penalty deposit provision

The proposed 25% penalty deposit to appeal a decision to the NCLAT will have unintended consequences. **Nisha Kaur Uberoi**, Partner & National Head Competition Law, Trilegal cautions that it may impact access to justice for small and medium size companies, in particular, who will now have to pay a higher deposit (from the existing 10%) which will significantly impact them given that India's highest economic penalties are imposed under the Competition Act.

Substantial Impact on the Competition Structural Landscape with the proposal of combining the CCI with the DG

Manas Kumar Chaudhuri, Partner and Head of Competition Law Practice Group, Khaitan & Co LLP highlights a couple of areas in the Bill that will have a significant impact. The merger of the former COMPAT with the NCLAT in May 2017 is still a work-in-progress.

While the new appeal process is work-in-progress, he opines that combining the CCI with the DG in the Bill is an innovative proposal that needs to be assessed on merits when implemented. The new structure may change the competition structural landscape substantially. We may require proper and workable robust filters to achieve the objective intended ensuring minimizing inordinate delays.

Changing the standard of control from existing decisive control to material influence

The proposed change to the standard of control from existing decisive control to material influence will result in an unnecessary burden on the industry. N**isha Kaur Uberoi**, Partner & National Head Competition Law, Trilegal opines that it will expand the scope of merger notifications and particularly impact private equity. Shorter merger review periods for phase-2 (from the existing 210 calendar days to 150 calendar days extendable by a further 30 calendar days) are most welcome. However, the shorter phase-1 merger review from 30 working to the proposed 20 calendar days will have unintended consequences of clock stops seeking additional information and likely invalidations unless the strength of the already overburdened and highly efficient merger department are quadrupled.

While there are areas that require further developments and clarifications, as **Nisha Kaur Uberoi**, Partner & National Head Competition Law, Trilegal says, the Amendment Bill is a welcome step. It makes the competition law more effective and facilitates ease of doing business in India.

Other Legislations that appear to have an overlapping effect with the Competition Act

The potential intersection of ONDC companies and the Competition Act

Open Network for Digital Commerce (ONDC) is a private non-profit Section 8 company established by the Department for Promotion of Industry and Internal Trade of the Government of India to develop open e-commerce. It is active and, **Manas Kumar Chaudhuri**, Partner and Head of Competition Law Practice Group, Khaitan & Co LLP predicts that it is likely to have an interface with the Competition Act. Stakeholders who may require a course correction in conducting their commercial activities may like to assess the opportunities and challenges going forward.

Digital Enterprises need to brace up for the impact of the EU's Digital Market Act

The Digital Market Act of the EU Parliament will prohibit specific actions by major digital platforms acting as gatekeepers. That will empower the European Commission to conduct market investigations and penalize non-compliant behaviour. The Commission introduced a digital services package in December 2020, including the Digital Services Act and the DMA.

Manas Kumar Chaudhuri, Partner and Head of Competition Law Practice Group, Khaitan & Co LLP opines that even though it is an EU legislation, yet it will impact all digital enterprises in India.

A Parliamentary Standing Committee (PSC) has already been set up under the able leadership of Mr. Jayant Sinha, Hon'ble Member of Parliament to assess DMA and its applicability in India. The PSC, as available in the public domain, has been drawing persuasive values from the EU legislation and is seeking information from digital enterprises, operating in India either directly or via their global parents incorporated outside India, about their business models. The purpose prima facie seems to understand the business models before initiating any regulatory actions if required.

The future of Competition Landscape

Aspirations from the CCI going forward

Being considerate of the industry concerns

The CCI has faced umpteen challenges before various High Courts of India on issues relating to breaches of due process and principles of natural justice. According to **Manas Kumar Chaudhuri**, Partner and Head of Competition Law Practice Group, Khaitan & Co LLP, had the authorities been a bit considerate in agreeing with the industry's concerns, these challenges could have been avoided.

The devil lies in the detail

For the law to be effective without posing an unnecessary burden on industry, **Nisha Kaur Uberoi**, Partner & National Head Competition Law, Trilegal suggests that the regulations should be out for public consultation and feedback. The regulations and proposed amendments in the law should come into effect in tandem akin to what happened when merger control was introduced on 1 June, 2011.

Abdullah Hussain, Partner – Competition Law, DSK Legal agrees that much will depend on the regulations framed. Even here, we can expect some interpretation called for by the constitutional courts in the first few years of implementation.

Enforcement must be in accordance with due process of law

Anand Pathak, Managing Partner, P&A Law Offices opines that although the Commission has come a long way in ensuring procedural fairness in the process of investigation, the evolution of competition law jurisprudence in India is still impacted by some significant procedural challenges. Those include the creation of a robust confidentiality regime, the importance of having a judicial member on the Commission and the involvement of experts in the investigation process.

As a lawyer, **Nisha Kaur Uberoi**, Partner & National Head Competition Law, Trilegal affirms the challenges faced are in ensuring that regulatory intervention is not disproportionate. And ensuring business and innovation are not impacted by overtly narrow market definitions.

The need for greater access to justice

The need of the hour is a proactive approach by both the regulator and industry to work together towards the wider goal of benefiting the economy and facilitating ease of doing business in India. To this end, **Nisha Kaur Uberoi**, Partner & National Head Competition Law, Trilegal suggests that for the ease of doing business and access to justice, the CCI should have benches in Bengaluru, Mumbai, and Chennai. The time for mere regional outposts which only do advocacy has long passed.

Opportunity to evolve and become a mature competition law jurisdiction

The jurisprudence around anti-competitive vertical agreements, gun-jumping, and abuse of dominant position still rely largely on precedents from mature competition law jurisdictions such as the EU and USA. There, the market realities are not necessarily analogous to India and our unique regulatory landscape, including strict regulation of FDI. And therein lies an opportunity for the CCI.

Anand Pathak, Managing Partner, P&A Law Offices opines that we live in exciting times where the Competition Commission of India is pro-actively looking into emerging new-age markets and critical sectors. Those include Telecom and e-commerce through sector studies and investigations directed against major industry players.

That is an opportunity for the Competition Commission of India to develop domestic jurisprudence that is better suited to address competition issues unique to our country and identify remedies aligned with the commercial realities of the Indian market.

More in-person hearings and interactions

Going forward, **Manas Kumar Chaudhuri**, Partner and Head of Competition Law Practice Group, Khaitan & Co LLP suggest that the in-person hearings and interactions between the CCI and the stakeholders must resume sooner.

Abdullah Hussain, Partner – Competition Law, DSK Legal opines that the industry should also introspect on whether they are compliant with competition law.

Suggestions to mitigate the unfairness of the investigation process

Given that the Competition Amendment Bill gives more extensive powers to the office of the Director General, Anand Pathak, Managing Partner, P&A Law Offices brings out some of the key areas where changes could mitigate the unfairness of the investigation process.

There is an opportunity to extend confidential treatment to information submitted by third parties who may be competitors of the parties being investigated. That is becasue these third parties are not eligible to be a part of the confidentiality rings formed by the Commission under the existing regime.

Introduction of a judicial member in the Commission would ensure a balanced approach in the investigation process.

Also, setting out guidelines to be followed during search and seizure operations (dawn raids) will ensure compliance with due process and preserve the rights of the parties being raided.

Improving the status of global merger control filings and domestic filings

Gun-jumping proceedings against defaulting enterprises avoiding filing a notifiable transaction are high in India. It continues to remain a concern.

Aspirations from Competition and M&A Lawyers

Making the most of the expanding role of Competition Lawyers

Anand Pathak, Managing Partner, P&A Law Offices opines that the role of a competition lawyer has become all the more important in the current era of enhanced regulatory intervention into e-commerce and, as a result, the close scrutiny of the conduct of digital platforms.

The role has expanded in re representing parties being investigated and advising e-commerce companies and digital platforms on their day-to-day operations and conduct in the market to ensure compliance with applicable laws.

In that context, **Abdullah Hussain**, Partner – Competition Law, DSK Legal shares that competition lawyers must familiarize themselves with the technology involved. They should keep abreast of the ever-changing regulatory landscape in the area, especially in the light of the increasing focus of anti-trust authorities worldwide on digital markets and digital platforms.

Anand Pathak, Managing Partner, P&A Law Offices similarly opines that as the market adapts to the changing socio-economic dynamics in the course of its evolution, the practice of competition law also has to evolve and adapt to these dynamic and evolving markets.

Opportunities to master the craft of competition and M&A Advisory

Anand Pathak, Managing Partner, P&A Law Offices highlights that some of the challenges while assisting e-commerce companies are to balance full cooperation in the investigation process while at the same time ensuring procedural fairness of the process. Another challenge for M&A lawyers today is regarding innovative structuring of commercial and investment transactions in accordance with the rapidly evolving regulatory landscape.

In Conclusion

All in all, competition law experts agree that the competition landscape's future looks bright. The Commission has established itself as a credible markets regulator to look out for. The industry is far more knowledgeable about competition law today than it was over a decade ago. The CCI has undertaken several market studies in sensitive areas, and that trend is likely to continue informing both the CCI and the industry of potential competition issues.

And very importantly, the role of competition lawyers will be crucial in the coming years as we identify the problems with applying and implementing the proposed amendments to the Competition Act and help companies align their businesses with the applicable legal framework.

Manas Kumar Chaudhuri
Designation: Partner and Head of Competition Law Practice Group, Khaitan & Co LLP

Manas Kumar Chaudhuri, an anti-trust litigator, advises Indian and overseas clients on Competition Law & Policy and related legal/regulatory issues. He has worked as the first Additional Registrar of the Competition Commission of India and was also associated with the drafting of various statutory Regulations under the Competition Act during his stay in the CCI. Prior to joining the profession as a full-time lawyer, Manas served as a Civil Judge in the West Bengal State Judicial Services. He also worked as the Joint Director (Legal) Monopolies and Restrictive Trade Practices Commission.

Anand Pathak
Designation: Managing Partner, P&A Law Offices

Anand S. Pathak has extensive experience in advising clients on the full range of US, European and Indian legal issues in connection with international mergers and acquisitions, privatiz ations, financings, technology licensing, distribution and franchising and agency arrangements, and European and Indian laws on competition, state assistance, trade and intellectual property. Mr. Pathak has represented clients in arbitrations, including the Government of India in bilateral investment treaty arbitrations and various companies in claims for compensation from the United Nations Compensation Commission for losses arising from the Iraqi invasion of Kuwait.

Nisha Kaur Uberoi
Designation: Partner & National Head Competition Law, Trilegal

Nisha Kaur Uberoi is a Partner and the National Head of the Competition Law Practice at Trilegal, leading one of the largest competition law teams in India, across Mumbai, Delhi and Bengaluru. Nisha is currently the lead lawyer on the alleged cement cartel case, where she is representing Ambuja Cements Ltd and ACC Ltd (both Lafarge Holcim companies) and Nuvoco Vistas Corporation Ltd (formerly Lafarge India Ltd), in which the cement companies were penalised approximately USD 1.4 billion by the CCI.

Abdullah Hussain
Designation: Partner – Competition Law, DSK Legal

Abdullah Hussain is a partner at the firm, with over 15 years of experience in competition law practice. Abdullah has been involved in this practice area since the formative stages of the Competition Act, during which time he has assisted the Government of India, and the then newly constituted Commission, in the formulation of its rules and regulations. Significant assignments undertaken in this area include preparing the CCI Regulations relating to mergers, determination of cost, general procedure, etc., and preparation of a report on India's Competition Policy as part of the working group on competition policy set up by the Planning Commission of India in 2006.

Arbitration Proceedings Of Avatar vs. Avatar In The Metaverse!

While the self-executing contracts are coded and automatically executed as soon as the predetermined conditions are met, the resolution of disputes of these automated written programs in the decentralized Metaverse attracts a lot of scepticism and discussion

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RISHIKA JAIN
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From 'browsing' the internet to 'being' inside of it, the complexities and dynamics of the internet and the global interaction on and around it has transformed manifold. With the recent blast of Metaverse, the augmentation of virtual reality has resulted in a universal marketplace being created wherein entertainment, shopping, education, communication and work environments interact and transact in a single space in a seamless manner. However, with an increase in transaction, the possibility of increasing disputes pave the way for finding modes of resolving these complex transactions between anonymous parties. However, before delving into the modalities and scope of resolving disputes in the Metaverse from a legal lens, it is imperative to understand the concept of Metaverse.

Created in 1992 by Neal Stephenson, Metaverse is a decentralized virtual platform, based on blockchain technology, using digital assets called "smart contracts". The users of a Metaverse create their own digital assets, avatars (digital identities), and experiences.[1]

Much like the real world, commerce, trade and exchange in the Metaverse need to be regulated for the transactions which take place through decentralized or crypto currencies. In order to regulate and facilitate these transactions, it becomes important that the trading takes place through these smart contracts, which are akin to digital contracts. For example: someone investing in real estate in the metaverse, a consumer buying some goods in the metaverse, two or more anonymous individuals engaging in business transactions - all such transactions need to be protected and regulated through a systematised mechanism. This would aid in protecting the interests of parties to such transactions in the Metaverse. These self-executing contracts are coded and automatically executed as soon as the predetermined conditions are met. That being said, the resolution of disputes of these automated written program in the decentralized Metaverse attracts a lot of scepticism and discussion. Amongst the finer modalities of resolving disputes arising out of these smart contracts, most of which are still being deliberated, one pertinent issue is that of party anonymity and consent. At present, it is unclear as to how these cornerstones of arbitration will be resolved with respect to all such exchanges taking place through the Metaverse, where the anonymity of parties is of utmost concern. While many experts have, and are continuing to explore the arbitration as one of the modes of dispute resolution in this 'meta jurisdiction', the discussion around the possibility of ensuring the cardinal rules and principles, while conducting arbitration amongst avatars has not been significantly gone over.

To aid the dispute resolution process for on-chain digital assets and smart contracts, the UK Jurisdiction Taskforce released its Digital Dispute Resolution Rules on April 22, 2021 ("UKJT Rules")[2] which, inter-alia, provide for a systematized dispute resolution process, including optional anonymity for the parties. While the UKJT Rules do not define 'smart contract', however, the same are incorporated by way of calling them as 'digital asset'[3].

Rule 13 of UKJT Rules not only provide for an option for the parties to remain anonymous to each other, but also cast this obligation on the arbitral tribunal, which is obliged not to disclose the identity details unless disclosure is necessary for the fair resolution of the dispute, for the enforcement of any decision or award, for the protection of the tribunal's own interests, or if required by any law or regulation or court order. This optional anonymity is subject to the mutual consent of the parties, which clearly ensures that the fundamental principle of party autonomy is duly protected.

Whilst the UKJT Rules allow the parties to remain 'anonymous' to each other, the parties are, however, still obliged to "provide details and evidence of their identity to the reasonable satisfaction of the tribunal".

Insofar as the scope of anonymity of arbitrators is concerned, the UKJT Rules, while providing for an option, of anonymity to parties, does not provide a cover in a situation where the 'real' identity of the arbitrator is not revealed to the parties. This brings in a situation wherein an arbitrator may be appointed by the appointing authority basis the consent of the parties to the qualifications and expertise of the arbitrator. However, other factors giving justifiable doubts on the independence of the tribunal are at the risk of being overlooked. It goes without saying that possible conflict of interest and necessary disclosures to the appointing authority become *sine qua non* for the arbitrator in this case.

However, the UKJT Rules are a step in aid for arbitral institutions in developing an organized dispute resolution mechanism for the disputes arising in, or in relation to Metaverse. Being at its nascent stage, these rules can become the touchstone for several arbitral institutes (such as ICC[4], LCIA[5], HKIAC[6], ICDR[7]) which mandate the parties to disclose their real identities to each other. It would be further important to check if the independence of the tribunal can be subjected to similar standards of disclosure and conflict of interests (e.g.: as prescribed under the IBA Guidelines on Conflicts of Interest in International Arbitration, 2014), or would it require a more comprehensive and exhaustive set of rules.

It is pertinent for all practitioners and stakeholders in the Metaverse to acknowledge that the complexities of the Metaverse cannot be dealt with traditional means of dispute resolution such as court litigation, at least in the foreseeable future. Hence, the scope resolving the disputes, arising out of smart contracts, or otherwise, within the 'meta jurisdiction' by way of arbitration need to be accepted.

The Metaverse is envisioned as a version of the internet providing for such stimuli wherein individuals and entities across the globe interact in an augmented reality giving them an experience as if they are transacting with each other across the table.

While the positioning and modalities of legal intricacies are far from being called 'developed', but with the kind of expansion and growth that is being witnessed of the Metaverse, it is safe to presume that the legal framework governing the functionalities of the Metaverse are soon to see the light of the day.

Needless to say, much like it is in traditional forms of alternate dispute resolution, the principles and fundamentals of party autonomy, consent, transparency ought to be embedded in rules that are to be developed for the Metaverse. However, the grey areas of the IP and data privacy in the Metaverse need to be delved into with much more caution and attention, as the complexities and the level of faith and trust required between anonymous parties (interacting through their avatars) is at a higher pedestal than a real life interaction and transaction between two parties.

[1] Olga V Mack, What Laws Apply in Metaverse, Available at:https://abovethelaw.com/2022/04/what-laws-apply-in-Metaverse/
[2] LawTech UK, Digital Dispute Resolution Rules UK Jurisdiction Taskforce, Available at https://35z8e83m1ih83drye280o9d1-wpengine.netdna-ssl.com/wp-content/uploads/2021/04/Lawtech_DDRR_Final.pdf
[3] Rule 2(a) UKJT Rules, 2021
[4] Article 4(a) and (b) and Article 5(a) and (b), ICC Rules of Arbitration 2021
[5] Article 1(i) and Article 2(i) and Article 4.7, LCIA Rules of Arbitration 2020
[6] Article 4.3 and Article 5.1, HKIAC Rules of Arbitration 2018
[7] Article 2(3)(b) and Article 3(3), ICDR International Dispute Resolution Procedures: International Arbitration Rules 2021.

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RBI'S DIGITAL LENDING RULES

A STEP IN THE RIGHT DIRECTION

According to the RBI, the Guidelines have been designed to protect borrowers and end regulatory arbitrage. While borrowers may perceive this as a welcome change, these Guidelines will certainly have an impact on the thriving Indian fintech industry requiring some of them to tweak their business models

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The Reserve Bank of India ("**RBI**") notified the Guidelines on Digital Lending ("**Guidelines**") on 2 September 2022. The Guidelines are a result of the Recommendations of the Working Group on Digital Lending, which were released by the RBI on 10 August 2022.

The Guidelines are applicable to existing as well as fresh customers of regulated entities from the date of their notification. Regulated entities ("**REs**") are entities that are regulated by the RBI or otherwise permitted to carry on lending under any other law. For a smooth transition, REs have been provided a timeframe till 30 November 2022 to put in place adequate systems and processes to be compliant with the Guidelines.

According to the RBI, the Guidelines have been designed to protect borrowers and end regulatory arbitrage. While borrowers may perceive this as a welcome change, these Guidelines will certainly have an impact on the thriving Indian fintech industry requiring some of them to tweak their business models. In this article, we look at the general impact of these Guidelines on borrowers and REs.

PROTECTION TO BORROWERS

1. **Customer Data Protection:** The Guidelines specifically prohibit digital lending applications ("DLAs") from accessing mobile phone resources such as media, contact lists, call logs of the borrower except for the one-time KYC requirement.

2. **Data Storage:** Borrowers must be informed about the storage of data and the type of data which is being stored.

3. **Key Fact Statement:** Borrowers are to be provided with a key fact statement at the time of disbursement of the loans and before the execution of contracts in a standardized format. Some of the details which the key fact statement must contain are:
   - all-inclusive cost of digital loans;
   - rate of penal interest or charges levied;
   - annual percentage rate;
   - recovery mechanism;
   - details of grievance officer; and
   - cooling-off period.

4. **LSP Charges:** Borrowers do not have to bear any charges which the lending service providers ("LSP") might charge. These are to be borne by the REs.

5. **Cooling Off / Lock-In Period:** Borrowers have been provided with a cooling-off/lock-in period, by which they are given time to decide if they wish to discontinue after availing the facility. The cooling-off period provided is 3 (three) days for a loan tenor of 7 (seven) days or more and 1 (one) day for a loan tenor of less than 7 (seven) days.

6. **Key Information Post Disbursement:** On successful execution of the loan transaction, the borrower must be sent information including but not limited to the key information statement, a summary of the loan product, sanction letter and terms and conditions to their verified email ID and via SMS.

7. **Publication by REs:** REs must publish the list of the DLAs and LSPs engaged by them on their website.

8. **Credit Limit Increase:** There cannot be an automatic increase in the credit limit unless explicit consent is taken from the borrower on record.

ISSUES FOR REs & LSPs

1. **Flow of Funds:** Loan disbursement under the Guidelines must happen directly from the lender's account to the borrower's account. The funds cannot be routed through the LSP's or other third-party service provider's account to the borrower. Exceptions have been made for co-lending arrangements governed by existing regulations, disbursals covered exclusively under statutory or regulatory mandates of the RBI or any other regulator and for disbursals for specific end uses. Since this would not cover digital payment methods, some LSPs may need to change their business models to accommodate this requirement.

2. **Deferred Payment Products:** Buy Now Pay Later ("**BNPL**") lenders might face higher scrutiny because they would now have to report every loan to Credit Information Companies (CICs) irrespective of the nature or tenor of the loan. Also, the requirement for disclosing the annual percentage rate upfront in the key fact statement could hamper the fast-growing BNPL lender industry since this is contrary to the current practice of certain BNPL lenders who tend to charge a flat rate fee for small, short-term loans.

3. **First Loss Default Guarantee ("FLDG"):** This has been one of the most talked about and highly debated issues stemming from the Guidelines. A FLDG is used widely by digital lenders where the LSP compensates the RE for a certain agreed percentage of the loan portfolio if the borrower defaults. It is basically an underwriting of the loan by the LSP. The "skin in the game" contention has been argued extensively here, stating that FLDGs enable LSPs to have skin in the game, thereby enabling them to ensure that they screen borrowers meticulously. This avoids defaults and protects the LSPs and the REs to the extent of the FLDG provided. The Guidelines have not been very clear on FLDGs. They simply state that REs must adhere to RBIs directions on securitization of standard assets especially in relation to synthetic securitization. Clarifications from the RBI

are expected on this issue.

4. **Cooling-off Period:** While a cooling-off period gives a borrower the opportunity to exit without any repercussions, this aspect could be misused by a borrower who is shopping for loans with better terms.

5. **Monitoring Data Policy:** The REs in addition to monitoring their own data policies, have to also monitor the data policies of their LSPs and ensure that there is no misuse of such data by the DLAs and the LSPs. This might create an unnecessary hassle on the REs to regulate the data policies of each of their LSPs.

> ***"While the Guidelines will lead to an increase in compliances and risk management controls for fin-techs, on the whole they seem to be a step in the right direction to regulate an otherwise unregulated and growing sector***

As evident from the above, there are certainly a lot of positives as far as these Guidelines are concerned. While the Guidelines will lead to an increase in compliances and risk management controls for fin-techs, on the whole they seem to be a step in the right direction to regulate an otherwise unregulated and growing sector. While there may be some hiccups in the short term, in the long run these Guidelines will benefit not just borrowers but fin-techs as well.

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Natasha's practice focuses on mergers and acquisitions, divestments, joint ventures, structured finance and general corporate law. She regularly advises on large cross-borders M&As as well as on secured and unsecured credit facilities with a particular focus on non-convertible debentures and bond issues (listed as well as unlisted).

Her clients include large domestic companies, multinational corporations, commercial and investment banks, financial institutions, private equity sponsors and borrowers.

She works closely with her clients, who value her calm and solution-oriented approach in helping them achieve their goals in a timely and efficient manner.

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Harsh focuses on mergers and acquisitions, debt financing and general corporate matters. His experience includes structuring transactions pertaining to the sale of equity, assignment of large loan portfolios as well as general advisory work. Harsh is a graduate of Pravin Gandhi College of Law, Mumbai.

MOONLIGHTING
A DESIRABLE WORK MODE

Whilst the discussions were being held in respect of giving legal recognition to the model of work from home, this flexible way of working has now given rise to dual or multiple employment by many organizations

VARSHA KRIPLANI
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With God's grace, we have passed through the most devastating times of the COVID pandemic and are seeing normalcy. During the pandemic, work from home (WFH) emerged as a necessary progression of working model which ensured sustainability and business continuity. The practice for WFH has continued & organizations have allowed employees to continue to work remotely. The work hours are adaptable to the nature of work being performed by the employee unlike the traditional employment pattern the employees are required to work certain hours in a day and number of days in a week depending upon the applicable prevailing laws.

Recently, the government notified Special Economic Zones (Third Amendment) Rules, 2022 in which a new rule 43A (work from home) was inserted in the Special Economic Zones Rules, 2006. The rule provides that any units (set up under SEZ) may permit its employees, including contractual employees, to work from home or from any place outside the SEZ in accordance thereof. The rules applies to various categories of employees.

Whilst the discussions were being held in respect of giving a legal recognition to the model of work from home, this flexible way of working has now given rise to dual or multiple employment by many organizations. This concept

in popular parlance is called 'Moonlighting'. A question comes to the mind as to how a person who is full time employed with an organization can take up any second employment beyond normal working hours fixed or declared by the organization where the employee is permanently employed? This concept is not new or alien in India and it would be wrong to suggest that in India there is no statutory restrictions or prohibition in relation to 'Moonlighting'. The Factories Act, 1948 which is a central legislation and regulates the labors employed in factories in India provides a restriction in Section 60 of the Act, that no adult worker shall be required or allowed to work in any factory on any day on which he has already been working in any other factory except as prescribed. There are restrictions on double employment in Delhi Shops and Establishment Act, 1954 and some other State laws. Employees are also governed by their respective contract of employment and applicable policies of the employer which generally contains clauses restricting dual employment. Policies on non compete rules and confidentiality are also areas which discourage dual employment.

Information in public domain suggest that Swiggy, a food and hyperlocal delivery start-up in August 2022, announced an industry-first 'Moonlighting Policy' and allowed its employees to work on other projects under certain conditions after working hours. "This could encompass activity outside of office hours or on weekends that does not impact their productivity on the full-time job or have a conflict of interest with Swiggy's business in any way".

The policy is now available for all full time employees of Bundl Technologies parent company of Swiggy including subsidiaries, affiliates, associates and group companies. Swiggy believes that working like this will help in both personal and professional development. On the other hand, IT companies termed the concept of 'Moonlighting' as cheating.

In the authors' opinion, the concept 'Moonlighting' may be a norm in future specially for people with multiple skill-set but it may be restricted to specific industries and a more regulated legislative regime in the interest of the employees is required. Another question that needs to be answered is if an employee is to work over and above his/her hours of work in his/her primary employment and work at night, necessarily the efficiency of the employee in the primary employment will take a hit which is the primary employers will not be able to accept. It cannot be denied that a deeper discussion is required on this model of working as well and this concept cannot be brushed aside. The areas which shall pose a challenge shall be the fatigue of employee and conflict of interest which can be dealt with coherent law and strict policies, however this shall certainly enable a prospective employer in retaining some of its employees with affordable salaries and meeting temporarily requirements of jobs.

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Varsha Kriplani is a Partner at SNG Partners. She has an overall experience of over two decades, practised as a litigating lawyer for the initial eight years with the Firm. Representing both national and multinational corporations before High Courts, the Supreme Court, conducting domestic and international arbitration, she fostered her career as a counsel on the corporate advisory side concentrating on drafting of financial documents. Working with Banks and Financial Institutions gave her an opportunity to deep delve and analyze unique industry-wise Bi-partite Settlements in relation to bank employees, Collective Bargaining Agreements executed between banks as an employer and employees.
She expanded her practice area in the realm of Human Resource Sector and created her niche practice area in "Human Resource and Employment Laws". Varsha now specializes and has a rich experience in providing Human Resource solutions to various corporates besides Banks and Financial Institutions.

ENFORCEMENT OF PLEDGE
AMBIT OF REASONABLE NOTICE

Courts typically assess the reasonableness of notice on the basis of the nature of the security and other underlying factual circumstances

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Creation of a pledge over shares, especially over the shareholding of the promoter group in the borrower entity or a related entity controlled by the promoter group is one of the common mechanisms for security creation in commercial lending transactions. It is widely believed that lenders typically prefer security in the form of pledged shares owing to the ease of enforcement by way of disposal, particularly in the case of shares of listed entities. Additionally, the prospect of the lender enforcing its pledge rights and selling such shares in the market also results in the promoter group's own control over the relevant entity being diluted, which usually ensures better compliance and discipline on part of borrowers in honoring their repayment obligations.

While the jurisprudence on this has evolved, the process of enforcing a pledge continues to be governed by the provisions of Sections 176 and 177 of the Indian Contract Act, 1872. Section 176 provides the pledgee with following remedies upon default by the pledgor, namely, suing the pledgor for the secured debt, retaining the security as collateral, or selling the pledged security upon giving the pledgor reasonable notice of sale.

Suing the pledgor for secured debt has its own challenges, especially if the pledge is from a third party and there is no covenant to pay. Additionally, appropriating pledged shares without sale process and reducing the loan exposure is not permitted either. For enforcement then, the only viable option is of sale, with 'reasonable notice'.

Under law, a 'reasonable notice' of sale is a mandatory element of the enforcement process, with the pledgor having the right to redeem the pledged security within such 'reasonable' period of time, and at any point until the actual sale of the security.[1] The requirement to provide a reasonable notice of sale cannot be waived under contract, with Section 176 not containing any non obstante clause rendering the said requirement subject to any contract to the contrary.[2] The notice contemplated under Section 176 is required to be clear and specific in its language, and must set out the intention of the pledgee to dispose of the pledged security. The language of the notice cannot be vague[3] or be limited to indicating an intention to arrange for a sale.[4]

The other relevant aspect is determining the sufficiency of the notice period. In drafting pledge documents, lending institutions follow either of the two approaches, i.e. (i) prescribing a notice period that both parties deem reasonable; or (ii) the documentation remaining silent on the duration of the notice period. The latter approach has been commonly adopted with lenders seeking to retain the leeway to enforce a pledge over security (particularly over listed shares) after providing a notice period of even two or three days. In each specific instance, the courts have assessed the reasonableness of the notice on the basis of the nature of the security and the underlying factual circumstances including the conduct of the borrower/pledgor.

1. Kunj Behari Lal v. Bhargava Commercial Bank, AIR 1918 All 363(2)
2. Hulas Kanwar v. Allahabad Bank, AIR 1958 Cal 644; Co-operative Hindustan Bank Ltd v. Surendra Nath Dey, AIR 1932 Cal 524; Official Assignee v. Madholal Sindhu, AIR 1947 Bom 217
3. Bharat Bank Ltd. v. Sheoji Prasad, AIR 1955 Pat 288
4. Co-operative Hindustan Bank Ltd v. Surendra Nath Dey, AIR 1932 Cal 524

In this regard, the approach adopted by a single judge of the Hon'ble Calcutta High Court in a recent judgment in the matter of *Manav Investment and Trading Company Limited v. DBS Bank India*[5] assumes significance. In the said case, the plaintiff pledgor had created a pledge over two separate sets of shares of the same borrower entity held by it in favor of the same lender. The main pledge agreement which governed both sets of pledged shares did not prescribe a notice period. However, significantly, one of the sets of pledged shares was also governed by an undertaking provided by the pledgor entity, which provided for a notice period of fifteen business days, with such document not being applicable to the other set of pledged shares.

In accordance with the underlying documentation, at the time of invoking the pledge (on the same day, for both sets of shares), the lender provided the pledgor with a notice period of fifteen business days qua the set of shares that was governed by the abovementioned undertaking, and a time period of two days for the other set of shares (which was deemed reasonable in the eyes of the lender and was in accordance with established judicial principles, especially in the absence of any prescribed time period in the underlying documentation).

In context of the above facts, the Hon'ble High Court took a view that regardless of the prescription of fifteen business days notice period being applicable under contract to only one set of shares, it would be reasonable to expect the lender to have provided the same notice period even for the other set of shares, given that the concerned shares were of the same entity, pledged by the same pledgor in favor of the same creditor and the invocation of pledge over both sets of shares had been undertaken on the same day. Accordingly, it was observed that providing varying notice periods for the two sets of shares could not be deemed as reasonable.

The argument that the documentation underlying one set of shares explicitly provided for a notice period of fifteen business days, while that for the other set of shares being silent on the same was disregarded on the basis that Section 176 was in either case not dependent upon a contract between parties and the reasonableness of the notice would therefore have to be construed independently of the specific contractual arrangement between the parties.

The abovementioned judgment carries significant connotations for lenders from the perspective enforcing a pledge, at the stage of drafting of the pledge documentation. One should also be mindful of such principle being extended to companies belonging to the same group. Particularly in the case of larger borrowers, involving multiple levels of security (and even creation of fresh security during the tenor of the facility, in case of a restructuring etc.), it is essential that security documentation be aligned at an overarching level to ensure that there is no inconsistency or material divergence within the same which may be utilized by borrowers/third party security providers to create hurdles in the enforcement of such security by lenders. Afterall, a pledge of shares is intended to be a security interest which is easily enforceable!

5. G.A. No. 1 in C.S. No. 138 of 2021, dated February 16, 2022

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HOW EXPENSIVE WILL BE YOUR ARBITRATION NOW?

UNEARTHING THE 'COST' AND 'FEES' CONUNDRUM IN AN INDIAN AD- HOC ARBITRATION

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I. Preface:

The Indian Supreme Court vide its judgment dated 30 August 2022 in the matter of ONGC v. Afcons Gunanusa JV has finally given clarity on the regime of chargeability of an arbitrator's fees under the provisions of the Arbitration and Conciliation Act, 1996 (the "Act"). Given that expenses to be incurred in an arbitration is one of the determining factors for invoking the arbitration, parties desirous of proceeding with ad hoc arbitrations, needed clarity on several aspects, including (i) how much fees would an arbitral tribunal duly constituted under the Act would charge; (ii) how can a party recover 'costs' involved in an arbitration; (iii) what would be included in the 'costs' of an arbitration; and (iv) whether a successful party can claim post award interest as 'costs' for recovering the fruits of an arbitral award, or losses for not being able to enjoy the said fruits. In this article, we intend to highlight and unearth the said issues, discuss the position settled by the Hon'ble Supreme Court on such issues and resolve the conundrum regarding the regime of 'costs' and 'fees' in an Indian ad hoc arbitration.

II. Background:

Before dealing with the latest position taken by Supreme Court ("Court") in relation to how much fees an 'arbitral tribunal' can charge under the Fourth Schedule to the Act, it is important to note the relevance of having such a schedule in the first place.

The 246th Law Commission Report ("the Commission" or "Commission Report"), in Chapter II paragraph 10, noted,

> "One of the main complaints against arbitration in India especially, ad hoc arbitration, is the high costs associated with the same – including the arbitrary, unilateral and disproportionate fixation of fees of several arbitrators."

Therefore, to provide "a workable solution to this problem", the Commission recommended a model schedule of fees based on the fee schedule set by the Delhi High Court International Arbitration Centre, now known as the Delhi International Arbitration Centre ("DIAC").To give teeth to the said recommendation of the Commission, the legislature, vide the Arbitration and Conciliation (Amendment) Act 2015 ("2015 Amendment") inserted the 'Fourth Schedule' to the Act. However, the said Fourth Schedule was not made applicable to 'international commercial arbitrations', or where parties have agreed to the determination of fees according to the rules of an arbitral institution.

The fourth schedule and party autonomy:

As we all know, party autonomy is the backbone of the concept of arbitration. In Bharat Aluminium Co. v. Kaiser Aluminium Technical Services, the Supreme Court observed that party autonomy is the "brooding and guiding spirit of arbitration".Therefore, this principle has its importance in all layers of an arbitration including determination of fee, which cannot be in violation of the said principle, given arbitration is a creation of an inter-se agreement between parties.

In line with the said principle, the division bench of the Court comprising of Hon'ble Mr Justice R F Nariman and Hon'ble Mr Justice Surya Kant, in its judgment dated 10 July 2019 in Gammon Engineers and Contractors Pvt Ltd v National Highways Authority of India, held that if the parties to an arbitration have agreed to a fee schedule for arbitrators, then the arbitrators will be entitled to charge their fees in accordance with this agreed schedule and not in accordance with the Fourth Schedule of the Act.This was later woven into the law vide the 2019 amendment which revamped Section 11(14) of the Act and includes an explanatory note as follows:

> "(14) For the purpose of determination of the fees of the arbitral tribunal and the manner of its payment to the arbitral tribunal, the High Court may frame such rules as may be necessary, after taking into consideration the rates specified in the Fourth Schedule. Explanation.—For the removal of doubts, it is hereby clarified that this sub-section shall not apply to international commercial arbitration and in arbitrations (other than international commercial arbitration) in case where parties have agreed for determination of fees as per the rules of an arbitral institution."

'Cost' and 'Fees' - Decoded:

Prior to the 2015 Amendment, Section 31(8) stated "unless otherwise agreed by parties, the cost of an arbitration shall be fixed by the arbitral tribunal". An element of doubt was introduced with the 2015 amendment which replaced Section 31(8) of the Act with "the costs of an arbitration shall be fixed by the arbitral tribunal in accordance with Section 31A". As a result, "agreement between parties" did not find any mention in the amended section. Furthermore, Section 31A included an explanation which stated that costs would mean "the reasonable costs relating to the fees and expenses of the arbitrators". Since a combined reading of Sections 31A and 31(8) appeared to leave no room for party autonomy as far as "fees" of arbitrators are concerned, arbitrators began imposing their own fee structures, despite the existence of agreement between parties on questions of fees. The question before the courts then came to be whether arbitrators could disagree with the fees stipulated by the parties in their agreement. Given the divergent stance taken by two single judges of the Delhi High Court, the question was eventually clarified by the Supreme Court in NHAI v. Gayatri Jhansi Roadways wherein R F Nariman, J. observed as follows:

> "However, the learned Single Judge's conclusion that the change in language of Section 31(8) read with Section 31-Awhich deals only with the costs generally and not with arbitrator's fees is correct in law. It is true that the arbitrator's fees may be a component of costs to be paid but it is a far crythere after to state that Sections 31(8) and 31-A would directly govern contracts in which a fee structure has already been laid down."

It has therefore been made abundantly clear that the terms "unless otherwise agreed by parties" is read into the provision as far as determination of fees is concerned. Arbitrators cannot strong arm parties

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> *"The number of sittings after which the revision would take place and the quantum of revision must be clearly discussed and determined during the preliminary hearings through the process of negotiation between the parties and the arbitrator(s).*

into applying the fees as prescribed in the Fourth Schedule, or any other fee structure, when parties have already decided on the same. Owing to many confusions and different interpretations taken by High Courts, it became incumbent on the part of the Apex Court to decide and settle these issues. Few of the ambiguities that the Fourth Schedule gave rise to are as follows:

a) Whether the arbitrator(s) are entitled to unilaterally determine their own fees;
b) Whether the term "sum in dispute" in the Fourth Schedule means the cumulative total of the amounts of under the 'claim' and 'counter-claim';
c) Whether the ceiling of ₹30,00,000 in the entry at Serial No. 6 of the 'Fourth Schedule' of the Act is applicable only to the variable amount of the fee or the entire fee amount; and
d) Whether the ceiling of ₹30,00,000 applies as a cumulative fee payable to the arbitral tribunal or it represents the fee payable to each arbitrator.

Finally, in ONGC (supra), the Court has given much-needed clarity on the above issues and held that arbitrators are not entitled to unilaterally determine their own fees as it would be violative of the principle of party autonomy and the doctrine of the prohibition of in rem suam decisions, meaning, arbitrators cannot be a judge of their own cause. Further, the Court held that the term "sum in dispute" shall be considered separately for the amount in dispute in the claim and counter-claim. As a result, arbitrators would be entitled to charge separate fees for the claim and counter-claim. On the ₹30,00,000 ceiling, the Court held that the ceiling is applicable to the cumulative amount of the base and variable amount, and in case of a sole arbitrator it would be ₹30,00,000/- plus the additional component prescribed in the Act. This would mean that the highest fee to be charged by an arbitral tribunal (except in case of a sole arbitrator) shall be ₹30,00,000/-, which is in line with the legislative intent, which was also indicated in the Commission Report. Lastly, the Court held that the ceiling is applicable to each individual arbitrator, and any other interpretation would lead to absurd consequences.

'Cost' and 'fees' – the distinction:

The purpose of paying fees is to provide remuneration to the arbitrator in return for performance of their mandate, and the purpose of awarding costs is to "indemnify" the winning party. The Court in ONGC noted the difference between these two terms in the following manner:

"While fees represent the payment of remuneration to the arbitrators, costs refer to all the expenses incurred in relation to arbitration that are to be allocated between the parties upon the assessment of certain parameters by the arbitral tribunal or the court."

Another point of distinction is the nature of claims. A claim for costs is similar to any other claim of a party, as opposed to fee, which cannot be considered a part of an award as it does not resolve a claim between parties. Moreover, fees are typically determined at the beginning of the arbitration, whereas costs are quantified at the end of the proceedings. The rationale behind vesting the arbitral tribunal with the power to determine the costs is not to trample party autonomy, but to ensure that the dominating party does not incorporate any unconscionable terms in the contract that the costs would entirely be borne by one party. However, an exception to this rule is captured in Section 31A(5) which states that any agreement relating to bearing of costs that are entered into by the parties after the dispute has arisen shall be valid.

Further, as a pro-arbitration step, the Court vide its judgment dated 1 September 2022 in the matter of Morgan Securities and Credits Pvt. Ltd. v. Videocon Industries Ltd. has inter alia held in view of Section 31(7)(b) that, if the arbitrator does not grant post-award interest, the award holder is entitled to post-award interest at the rate of 18%. It was further held that Section 31(7)(b) does not fetter or restrict the discretion that the arbitrator holds in granting post-award interest. The arbitrator has the discretion to award post-award interest on a part of the sum. Reference is drawn to the following paragraph for reasoning of the Court:

> "19. Section 31(7)(a) confers a wide discretion upon the arbitrator in regard to the grant of pre-award interest. The arbitrator has the discretion to determine the rate of reasonable interest, the sum on which the interest is to be paid, that is whether on the whole or any part of the principal amount, and the period for which payment of interest is to be made – whether it should be for the whole or any part of the period between the date on which the cause of action arose and the date of the award. When a discretion has been conferred on the arbitrator in regard to the grant of pre-award interest, it would be against the grain of statutory interpretation to presuppose that the legislative intent was to reduce the discretionary power of the arbitrator for the grant of post-award interest under clause (b). Clause (b) only contemplates a situation where the arbitration award is silent on post-award interest, in which event the award-holder is entitled to a post-award interest of eighteen percent."

Principles of 'Awarding costs':

When it comes to costs, the "loser pays principle", meaning the unsuccessful party has to bear the costs of the arbitration and the "cost follows the event" method, meaning the calculation of costs at the conclusion of the proceedings, have been incorporated in laws across jurisdictions, including the laws of India. More often than not, costs are awarded in full to the award creditor. However, some tribunals follow a nuanced approach and award costs basis the relative success and failure of parties. In the case of Swiss Singapore Overseas Enterprises Pte Ltd. v. Sara International Pvt. Ltd, the Court discussed the costs awarded in a SIAC arbitration, wherein both, the claim and counterclaim were defeated, the costs were apportioned between parties in proportion of the costs of making the claim and counterclaim. The Respondent was awarded 70% costs of the arbitration, which was arrived at by the tribunal by awarding the respondent 85% of the costs less the notional recovery by the claim of 15%.

So finally, how much fees?

The question of quantum of fee payable to the arbitrators can be broadly divided into three categories: (i) institutionalized arbitration where the fee payable to the arbitrator is governed by the prescribed fee schedule; (ii) ad hoc arbitrations where (a) the fee is prescribed in the agreement between the parties, (b) where the fee is fixed by the court while appointing the arbitral tribunal, (c) where no fee is prescribed in the agreement between the parties, or where the court while appointing the arbitral tribunal does not fix the fee or permits the arbitral tribunal to fix the fee; and (iii) where the arbitration fee is prescribed and governed by the Fourth Schedule to the Act.

Given the interpretation of the Fourth Schedule is now in place and unambiguous, it would be beneficial to populate an indicative rate/fees card to compare the fees chargeable in an Indian ad hoc arbitration vis-à-vis renowned arbitral institutions. Usually while making choice of which arbitral institution should administer the arbitration, the parties focus on cost and time saving-considerations. A party would have to compare various institutional rules on the basis of their fee schedule as well as understand the steps taken to increase efficiency both before and during the arbitration proceedings (such steps could include provisions for consolidation of arbitrations, joinder of parties, electronic communication and filing, among others).

For the benefit of the readers, see below a comparative chart on fees chargeable on different platforms such as: (1) THE ICC ARBITRATION RULES 2021; (2) THE SIAC ARBITRATION RULES, 2016; (3) THE LCIA ARBITRATION RULES, 2020; (4) THE MCIA RULES, 2016

Sr. No.	Component	ICC Rules, 2021 *For calculation of the Arbitrator's fees and Administrative Expenses you may refer to the scale/table attached below.	SIAC Rules, 2016	LCIA Rules, 2020	MCIA Rules, 2017	Schedule 4 of Arbitration and Conciliation Act 1996
1.	Filing or Registration Fee	US$ 5,000	S$ 2,140 for Singapore Parties and S$ 2,000 for Overseas Parties (equivalent amount in US$ is 1,524.96 and 1,425.20 , respectively) The fee includes 7% GST and is application to all arbitrations administered by SIAC and each claim and counterclaim.	£ 1,950 (equivalent amount in US$ is 2,253.69)	INR 40,000 (equivalent amount in US$ is 503.42)	
2.	Administrative Expenses	Where the amount in dispute is over US$ 500 million, a flat amount of US$ 150,000 shall constitute the entirety of the ICC administrative expenses. Note: To calculate the ICC administrative expenses, the amounts calculated for each successive tranche of the amount in dispute must be added together. A detailed breakdown of the scale of expenses is available here.	When amount in dispute is up to S$ 50,000, the fee is S$ 3,800. (equivalent amount in US$ is 2,707.99) For disputes with amount over S$ 100,000,000, the fee is capped at S$ 95,000. (equivalent amount in US$ is 67,699.85) Note: The Administrative fee is exclusive of SIAC's administrative expenses, expenses of the tribunal and usage costs. 7% GST may be applicable on the fee.	The LCIA calculates administrative fees at hourly rates based on the time spent by members of the Secretariat. The rates are as follows – Registrar/ Deputy Registrar -£280 per hour (US$ 323.72 per hour) Counsel - £250 per hour (US$ 289.03 per hour) Case administrators - £195 per hour (US$ 225.36 per hour) Casework accounting functions - £165 per hour (US$ 190.69 per hour)	For disputes up to ₹5,00,000, fee is fixed at ₹1,10,000. (equivalent amount in US$ is 1,383.97) For disputes above ₹5000,00,00,000, fee is fixed at maximum of ₹41,60,000. (equivalent amount in US$ is 52,339.04) Note: The Administrative fee is exclusive of expenses of the tribunal, out of pocket expenses, taxes and usage costs.	
3.	Arbitrator's Fees	For amount in dispute up to US$ 50,000 the minimum fee is $3,000. The maximum fee is to be calculated on basis of 18.0200% over $3,000. For disputes over US$ 500,000,000, the fee is capped at; (i) Minimum of 0.0100% on $3,000 and; (ii) Maximum of 0.0400% on $3,000. Fees pertaining to the expedited procedure is as follows: For amount in dispute upto US$ 50,000 the minimum fee is $2,400. The maximum fee is to be calculated on basis of 14.4160% over $2,400. For disputes over US$ 500,000,000, the fee is capped at; (i) Minimum of 0.0080% on $2,400 and; (ii) Maximum of 0.0320% on $2,400. Note: The Court may fix the fees of the arbitrators at a figure higher or lower than that which would result from the application of the relevant scale should this be deemed necessary due to the exceptional circumstances of the case. Separate fee arrangements between the parties and the arbitrator are contrary to the Rules.	For amount in dispute up to S$ 50,000, the fee is fixed at S$ 6,250. (equivalent amount is US$ 4,453.87) For disputes Above S$ 5 million, fee is fixed at S$ 605,000 (equivalent amount is US$ 4,31,008.05) + 0.040% excess over 5 million. Up to a maximum of S$ 2,000,000. (equivalent amount is US$ 14,24,790.60) Note: In exceptional circumstances, the Registrar may determine that an additional fee over that prescribed in the applicable Schedule of Fees shall be paid.	Fees shall be at hourly rates not exceeding £500 (equivalent amount in US$ is 577.86) Note: The Arbitral Tribunal's fees will be calculated by reference to work done by its members in connection with the arbitration and will be charged at rates appropriate to the particular circumstances of the case, including its complexity and any requirements as to special qualifications of the arbitrators.	For disputes up to ₹5,00,000, fee is fixed at a minimum of ₹45,000 and maximum of ₹1,85,000. (equivalent amount in US$ is 566.17 and 2,327.58) For disputes above ₹50,00,00,00,000, fee is fixed at a minimum of ₹30,00,000 and maximum of ₹8,50,00,000. (equivalent amount in US$ is 37,744.50 and 1,069,427.50) Note: The Emergency Arbitrator's fees shall be capped at 20% of a sole arbitrator's maximum fee in accordance with the Schedule. However, it cannot be less than Rs. 300,000.	For disputes up to ₹5,00,000, fee is fixed at a minimum of ₹45,000 (equivalent amount in US$ is 566.17) For disputes above ₹ 20,00,00,000 fee is fixed at ₹19,87,500 (equivalent amount in US$ is 25,005.73) + .5% of the claim amount over and above ₹20,00,00,000 with a ceiling of ₹30,00,000.
4.	Fees payable to the Tribunal Secretary	No specific fee allocation provided.	No specific fee allocation provided.	£75 to £175 per hour (US$ 86.68 to US$ 202.26 per hour)	No specific fee allocation provided.	-

5.	Provisional Advance	The Secretary General may request the Claimant to pay a provisional advance in an amount intended to cover the costs of the arbitration. Any provisional advance paid will be considered as a partial payment by the claimant of any advance on costs fixed by the Court. The advance shall in normal circumstances not exceed the amount obtained by adding the ICC administrative expenses, the minimum of the fees (as set out in the scale) based upon the amount of the claim and, the expected reimbursable expenses of the arbitral tribunal incurred with respect to the drafting of the Terms of Reference or the holding of the case management conference.	No specific requirement for such payment.	No specific requirement for such payment.	No specific fee allocation provided.	-

AND (4) FOURTH SCHEDULE UNDER THE ACT.

Concluding thoughts:

The relationship between parties and arbitrator(s) is purely contractual in nature. Upon that relationship, the law superimposes a duty upon the arbitrator(s) to act as an impartial and independent adjudicator. Party autonomy is the overarching principle of the arbitration and is enshrined in inter-alia Section 2(6) of the Act as it allows the parties not only to choose the applicable law but also the procedure that will govern the arbitration and thereby limits the court intervention. It is therefore implied, that the said principle of party autonomy will extend to parties' freedom to decide the fees payable to the arbitrator(s). While certain foreign jurisdictions enable the arbitral tribunal to fix the fees typically subject to review by courts, there are jurisdictions which continue to give value to parties' consent in determining renumeration for arbitrators. In certain jurisdictions like Germany, arbitrators are prohibited from unilaterally fixing their fees because it violates the doctrine of the prohibition of in rem suam decisions, i.e., arbitrators cannot give an enforceable ruling on their own fees. Austria and Switzerland also do not allow arbitrators to issue binding and enforceable orders regarding fixation of their own fees. In Italy, while the arbitrators can determine fees in absence of an agreement between parties, such fees become binding only once the parties' consent to it. In Singapore, in absence of a written agreement, a party may approach the Registrar of the Supreme Court within the meaning of the Supreme Court of Judicature Act 1969 for the assessment of fees. Ideally, in ad hoc arbitrations, the fees payable to the arbitrator(s) should be decided through an arrangement between the parties and the arbitrator(s). In an ad hoc arbitration where arbitrator(s) are appointed by parties in the manner set out in the arbitration agreement, upon constitution of the arbitral tribunal, it is highly recommended that the parties and the arbitral tribunal shall hold a preliminary meeting to finalize the terms of reference (and fees chargeable) which would serve as a tripartite agreement between the parties and the arbitral tribunal and may include the component of fees chargeable (with stages of payment). It is possible that during such preliminary hearings, the parties and the arbitral tribunal may be unsure about the extent of time that needs to be invested by the arbitrator(s) and the complexity of the dispute. It is also possible that the arbitral proceedings may continue for much longer time than was expected. In order to anticipate such contingencies, during the preliminary hearings, the parties and the arbitrator(s) should stipulate that after a certain number of sittings, the fee would stand revised at a specified rate. The number of sittings after which the revision would take place and the quantum of revision must be clearly discussed and determined during the preliminary hearings through the process of negotiation between the parties and the arbitrator(s). The fixation of arbitral fees at the threshold will obviate the grievance that the arbitrator(s) are arm-twisting parties at an advanced stage of the dispute resolution process. In such a situation, a party who is not agreeable to a unilateral revision of fees demanded by the arbitral tribunal in the midst of the proceedings has a real apprehension that its refusal may result in embarrassing consequences bearing on the substance of the dispute.

Further, as good practices for getting a full reimbursement for costs parties should ensure that they keep accurate records of their expenses. Arbitrators do not entertain a claim for costs without adequate supporting documents. Therefore, keeping true copies and/or originals of invoices, lawyer's engagement letter, etc. are very important.

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NFT AS PROPERTY: A LEGAL ANALYSIS

However, the law must first recognize NFT as personal property which is a challenge

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Non-Fungible Tokens (NFTs) are being touted as the next big thing in the digital world. The enthusiasts proclaim that NFTs are the future of digital property, and tokenization of assets has the potential to disrupt how digital (and in future, the real world) assets are acquired, owned, and transferred.

In law, the tokenization of real-world assets has a long history. A negotiable instrument, bill of lading, deed of title, and security certificate each represents an asset and the rights and interest therein. They, therefore, qualify as tokens. Tokenization evolved to ensure safety, security, of the asset and convenience in transferring its ownership. The law too evolved keeping pace with these new forms of assets, and with the long-established customs of the trade, it provided the necessary conceptual framework for determining the rights and obligations of the parties.

In each of these cases, the token represents the proof of ownership of the underlying asset and the transfer of the token results in the transfer of ownership with all its incidents.

In this article, I examine whether NFT as a token meets the test.

The technology

The value proposition for NFT lies in its uniqueness, immutability, and exclusive ownership. Blockchain technology enables these features. Blockchain is a database which no one entity controls, and subject to protocol, anyone can make an entry on it. A new transaction (or entry) can be entered on a block. A new block is created through the mining process (or minting). Once the transaction is complete, the block is closed. A new block is linked to the block preceding it. The information in each block in the chain is encrypted along with the information in the block preceding it into a mathematical representation called "hash". The unique feature of "hash" is that the moment an input is changed, a new "hash" is created. So, any change in any of the blocks in the chain will change the "hash". Thus, every time a new transaction is entered, the "hash" changes and the new transaction is revealed. This makes fraudulent transactions extremely difficult, if not entirely impossible. This gives the token its unique feature of being non-fungible or immutable.[1]

There are two options for the storage of digital assets tethered to the NFT - on-chain and off-chain storage. In the case of on-chain storage, the digital asset is hashed and embedded into the token. And in the case of off-chain storage, the digital asset is stored elsewhere on a server, and the token is tied to it through a URL pointing to it. In such a case, the token only serves as a record of the terms of purchase and the URL for the digital asset.

In simple terms, NFT is an entry in a blockchain ledger which records right to an underlying asset. The rights and interests that the token represent are embedded in it and, at times, even the underlying digital

1. Fairfield, Joshua A.T. (2022) "Tokenized: The Law of Non-Fungible Tokens and Unique Digital Property," Indiana Law Journal: Vol. 97: Iss. 4, Article 4, 1261-1313 at page 1269-1270. Available at: https://www.repository.law.indiana.edu/ilj/vol97/iss4/4.

asset (on-chain storage). Further, since it is based on distributed ledger (or blockchain) technology, the prior transactions involving it are recorded on the blockchain, and the provenance of its ownership can therefore be verified. Tokenization of an asset means creating a digital entry on a blockchain ledger which is tied or tethered to the asset being tokenized. The token is thus minted. Once a token is minted, it can be sold to any willing buyer on the same platform where it was minted or elsewhere.[2]

Application of NFT technology

NFT, as we know it, came into vogue for digital assets, particularly digital art. NFT-enabled marketplace for digital art has opened a whole new world of opportunity for digital artists. An artist can tokenize his digital artwork and sell it to a collector, who can sell it to other buyers if and when the value appreciates.

There is a flourishing market for tokenized digital collectables - the first tweet of Jack Dorsey, a memorable moment in a sports event, musical composition or just a collectable fad like CryptoKitties.

NFT is also being used for physical (or real-world) assets. In such cases, the rights and interests created in the physical asset are embedded in the NFT. Tokenization, in such a case, enables digital transfer. Since it is on a blockchain, there is an added advantage of the ability to verify prior transactions and the provenance of the title. A physical item can thus be traded digitally, and a purchaser who wishes to take it in possession can redeem the token.[3] Securities lend themselves very well to digital tokenization, as do negotiable instruments.

Tokenization has the potential for application in the real estate market (and dispense with the need for title search), securities trading, documentary credit, commodities trading (through tokenization of bill of lading) and other commercial activities.

NFT websites represent that a purchaser acquires the NFT and the ownership of the underlying asset. They make specific representation regarding acquisition of ownership of NFT (and implicitly the asset tied to it) andits unrestricted transferability.

Concept of ownership

Ownership is a bundle of rights. It is *"a right [over a thing] indefinite in point of user, unrestricted in point of disposition and unlimited in point of duration"*.[4] An owner has the right in perpetuity to use the thing that he owns in the manner he chooses and dispose of as he pleases. It can be absolute or limited by prior encumbrances.

NFT as medium of transfer of ownership

When a person buys an NFT, he would like to believe that he owns the token and the title to the underlying asset without encumbrance. He is free to sell it to any willing buyer for the value he negotiates, or the market determines, and the seller has no control over the further sale. However, is it really so?

2. Moringiello, Juliet M. and Odinet, Christopher K., The Property Law of Tokens (November 1, 2021). 74 Florida Law Review 607 (2022), U Iowa Legal Studies Research Paper No. 2021-44, Widener Law Commonwealth Research Paper at page 5. Available at SSRN: https://ssrn.com/abstract=3928901 or http://dx.doi.org/10.2139/ssrn.3928901.
3. Supra note 1 at pg. 1277.
4. John Austin, 1879, Lectures on Jurisprudence, or The Philosophy of Positive Law, 2 volumes, R. Campbell (ed.), 4th edition, revised, London: John Murray; reprinted, Bristol: Thoemmes Press, 2002.
Supra note 2 at page 26-34.

NFT platforms promote NFT as proof of ownership of the underlying asset. The creation of NFT and the rights annexed to it are, however, governed by the terms of service of the NFT platform where it was created.

In reality, the rights acquired by the purchaser fall far short of legal ownership with all its incidents described above due to the terms of service of these platforms and the control they exercise over the NFT because of the nature of the technology.

In a paper published in the Florida Law Review, the authors reviewed the terms of service of eight NFT platforms. They concluded that:

- Though the website disclaims control over the token, the terms of service enable the website to block access to the token created. The terms of service also enable the website to remove digital assets in some instances.
- The terms of service do not provide a direct link between the token and the underlying asset. In the case of digital artwork, the terms of service impose restrictions against commercial use.
- NFT does not grant intellectual property right in the underlying creative work.

The authors concluded that NFTs do not embody the property rights of the reference asset. They found that the claims made by the NFT platforms in that regard were often confusing and in conflict with their terms of service. There was a complete lack of clarity regarding the linkage between the NFT and the underlying asset. In the case of off-chain storage of underlying assets, the linkage is further weakened due to the purchaser's lack of control over the storage.

Historically, tokenization worked because there was an elaborate legal framework to support it. It is the law which created the linkage between the token and the underlying asset. For example, the bill of lading embodies the title to the goods because the law recognizes it. There is no such legal framework for NFT. The contractual framework under which NFT is created does not fill that gap. On the contrary, as described above, it adds to the confusion and, thus, creates more uncertainty.

However, the fact remains that NFT, despite its legal flaws, is becoming mainstream for digital assets. It urgently needs a legal framework for it to succeed.

Arguably the existing law can be retrofitted to provide such framework. Indian law does recognize intangible asset as a form of property. Therefore, the laws governing the sale of goods and transfer of property can provide the necessary framework. However, the law must first recognize NFT as personal property which is a challenge. The NFTs, as currently constituted and on offer, provide weak linkage to the underlying asset. They are closer to a bundle of contractual rights in relation to it, rather than its representation in form of a token.

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GREAT EXPECTATIONS: INDIA'S TRYST WITH CLIMATE CHANGE

A few months before the COP Statement was issued last year, during an Independence Day address, the Prime Minister had pledged that India would achieve energy independence (i.e., the country would end its coal and oil imports) by 2047.

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While presenting the Union Budget this year, the Indian Finance Minister had announced the government's intention to issue 'green bonds' with a sovereign rating, the proceeds of which would be used to finance a variety of public-sector green infrastructure projects. According to recent media reports, it appears that the government is about to finalize the framework for such sovereign issuance, including for the purpose of identifying projects/sectors that will qualify for funding.

A source of worry, however, could be India's sovereign credit rating – which is just at 'investment grade' (according to some rating agencies). Any further downgrade might lead to global funds reducing their exposure to Indian sovereign securities pursuant to their internal rules. Further, since these bonds will be rupee-denominated, currency risk perceptions might become a critical factor, along with a depressed debt market – given the global effects of inflation and the Ukraine War. Besides, unlike in several countries where green bonds are tax-exempt, it appears that such exemptions will not be available here. This seems to be in line with India's stance where the Prime Minister has indicated that the country's transition to renewable energy ("RE") ought to be incentivized by the developed world.

INDIA'S AMBITIOUS CLIMATE TARGETS

At the 26th session of the Conference of the Parties (COP 26) held in Glasgow last year, the Indian Prime Minister promised to achieve net-zero greenhouse gas (GHG) emissions for his country by 2070 (the "COP Statement"). Among other things, India also aims to: (i) reach 500 gigawatts ("GW") of non-fossil energy capacity (which, when done, will be the world's largest expansion in this regard); and (ii) meet 50% of its energy requirements exclusively from RE – both by 2030. A couple of month ago, the Union Cabinet approved these targets as part of the country's updated Nationally Determined Contribution ("NDC") under the auspices of the United Nations Framework Convention on Climate Change ("UNFCCC").

Significantly, both within the COP Statement as well as in India's updated NDC, the topic of climate finance was unequivocally invoked. For instance, the Prime Minister spoke about how India expected developed countries to provide a trillion dollars in climate finance at the earliest. Similarly, the Press Release with respect to India's revised NDC stated that the country's climate-related initiatives have historically been funded through domestic capital; however, it would now require, in addition, both international finance as well as technological knowhow from developed countries, since such was the latter's responsibility under the UNFCCC in respect of collectively combating climate change.

INDIA'S PAST PERFORMANCE AND FUTURE PROSPECTS

To be sure, India appears to be on the right track with regard to its pivot towards renewables. For example, in the draft National Electricity Plan for 2022-2027 ("NEP") released by the Central Electricity Authority (CEA) last month, the Ministry of Power (MoP) estimates that solar

"The Press Release with respect to India's revised NDC stated that the country's climate-related initiatives have historically been funded through domestic capital; however, it would now require, in addition, both international finance as well as technological knowhow from developed countries, since such was the latter's responsibility under the UNFCCC in respect of collectively combating climate change.

energy will emerge dominant in coming years, even though coal will continue to remain a staple in the country's energy mix. Back in 2017 itself, India had started adding more renewables relative to coal within this mix, and such trend is likely to continue into the future. For context – while the country plans to add 35 GW of coal to its extant capacity by 2031-32, it is looking to add almost ten times that amount to solar and three times that amount to wind within the same period. As of May 2022, India's installed capacity in RE stood at 160 GW, already representing 40% of its aggregate. Moreover, it has continued to rank third in the world (including last year): (i) for total renewable capacity additions, as well as (ii) in respect of the Renewable Energy Country Attractiveness Index (RECAI) published biannually by EY (behind China and the US).

However, despite this accelerated pivot, India's annual rate of RE capacity-addition (going by current record) is nowhere close to what is necessary for achieving its NDC target. The country needs to add 50 GW of RE capacity every year; yet, as recently as in 2021, notwithstanding its high global rank, India managed to add only about 15 GW, compared to three and nine times that amount added by the US and China, respectively. Therefore, according to the NEP, massive investments in RE will be required over the remainder of this decade, over and above the present surge in government allocation, private capital, and foreign investment levels.

CLIMATE FINANCE AND INVESTMENT OPPORTUNITIES

A report published last year by the International Energy Agency (the "IEA Report") suggests that in order to reach net-zero emissions on a global scale, annual RE investments into developing countries in general need to expand sevenfold in the next eight years – from less than USD 150 billion (as per 2020 levels) to over $1 trillion by 2030. Consistent with India's call for increased financial collaboration, the IEA Report argues how countries of the Global South find themselves facing a structural disadvantage. Further, this disadvantage is exacerbated on account of skewed access to international capital. Yet, large investments are always necessary to address paradigmatic developmental changes, such as those related to combating global warming without compromising local industry. This is especially true when developing countries need to reconcile their unique security concerns in respect of energy with global ones related to the environment, intergenerational equity, and sustainable development. Despite financial resources being abundantly available worldwide, channeling such funds into appropriate economies, sectors, and projects remains a challenge.

Accordingly, governments from developed economies could give international (or sovereign) public finance institutions an express mandate to fund clean energy transitions in the developing world. For instance, Norfund, the Norwegian government's development finance institution ("Norfund"), recently entered into a strategic investment partnership with Italian firm Enel Green Power ("Enel") to explore the Indian RE market. In August, the new climate investment fund managed by Norfund on behalf of Norway's Ministry of Foreign Affairs, along with the country's largest pension company, agreed to pick up a 49% stake in a 420 MW solar power plant in Rajasthan which Enel is currently building. Importantly, pursuant to the IEA Report and its own climate impact assessment, Norfund has chosen to prioritize India along with a few other emerging economies across South/Southeast Asia and Africa, having earmarked 10 billion NOK (approx. USD 1 billion) over the next five years.

INDIA'S RESPONSE

As far as the Indian government is concerned, it now appears to be thoroughly alive to the country's steep capital requirements. Pursuant to a report on the prevailing financial constraints in the RE sector submitted to Parliament in February this year, a standing committee (the "Committee") was able to zoom in on many of the key issues discussed elsewhere. More importantly, the Committee provided some useful recommendations, some of which appear to have gained traction (along with welcome regulatory interventions related to the national energy market). For instance, the Committee rightly identified the 'huge gap' between the required and actual investment with respect to RE capacity-addition in the country. Accordingly, it suggested that the Ministry of New and Renewable Energy (MNRE) should: (i) seek alternative financing mechanisms such as green bonds and infrastructure investment trusts (InvITs); and (ii) prescribe 'Renewable Finance Obligations' (like 'Renewable Purchase Obligations') for lenders, such that banks and non-banking financial companies (NBFCs) may be required to invest a certain percentage of their capital in RE.

Further, the Committee also suggested that the Indian Renewable Energy Development Agency (IREDA) ought to be allowed to borrow from the Reserve Bank of India ("RBI") in a manner that ensures the availability of low-cost finance for RE projects. In addition, stringent RBI norms related to non-performing assets (NPAs) create obstacles for funding such projects. This is on account of, inter alia, certain seasonality-related concerns in the RE sector. Accordingly, the government could look into these matters.

CONCLUSION

A few months before the COP Statement was issued last year, during an Independence Day address, the Prime Minister had pledged that India would achieve energy independence (i.e., the country would end its coal and oil imports) by 2047. While solar could become India's biggest source of energy in the future – a country with almost 300 days of sun a year – coal-fired power plants still account for more than half its total installed capacity. As far as becoming 'net-zero' by 2070 is concerned, several techno-economic challenges will need to be addressed in order to achieve 100% RE status.

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Buyer-led Supply Chain Finance: Unlocking Value Through Financial Innovation

In a buyer-led financing program, the lender will establish a supply chain financing program for the suppliers of a buyer, based on the credit appraisal of such a buyer. This financial innovation takes advantage of the higher credit ratings of the buyers, that are generally large corporations. As a result, the suppliers, which are usually MSMEs, have access to cheaper credit while also taking advantage of the benefits associated with an SCF Platform.

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The disruptions caused in the global supply chain networks in the aftermath of the COVID-19 pandemic have brought to the fore the importance of maintaining strong and resilient supply chain networks. While the world continues to reel and recover in the aftermath of the COVID-19 pandemic, it remains important to allow the supply chain networks easy access to capital. This will play a key role in building stronger supply chain networks that can not only recover from the current disruptions but also build resilient infrastructure that can withstand further disruptions going forward.

While globally, supply chain financing systems have gained prominence, in India, these systems are yet to gain widespread traction, especially among the micro, medium and small enterprises (MSMEs). While traditional banking solutions are available to MSMEs, access to capital through such means has remained cost prohibitive. In June 2019, a report by the Reserve Bank of India's Expert Committee on MSMEs (RBI MSME Report), established that the credit gap in the MSME sector is about ₹25 trillion[1].

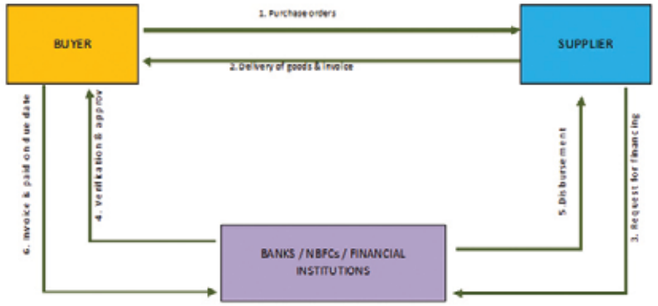
This article aims to explore how innovations in supply chain financing can enhance the flow of capital and reduce the credit gap in the MSME sector, which holds the key to India's growth story.

Traditional Supply Chain Finance

Supply chain financing is a cash flow-based lending program which is a shift from the traditional balance-sheet-based financing. The RBI MSME Report highlighted the importance of cash flow-based lending in easing the credit gap that afflicts the MSME Sector[2]. In a typical supply chain, once the supplier fulfills an order and raises an invoice, the buyer has a period ranging from 30 - 90 days to clear the invoice. This leads to locking of capital for the supplier for such a duration. Supply chain financing aims to free up capital available to the suppliers.

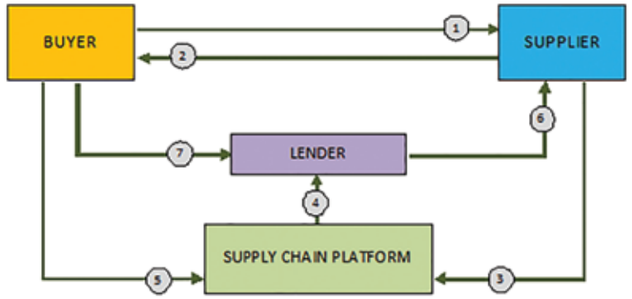
In a traditional supply chain financing, as illustrated below, the supplier reaches out to the financial institution and establishes a financing program for itself. However, given the difficulty MSMEs generally face in accessing credit, such access to financial institutions is often difficult and cost prohibitive for MSMEs.

[1] Report of the Expert Committee on Micro, Small and Medium Enterprises, 25 June 2019 https://rbidocs.rbi.org.in/rdocs//PublicationReport/Pdfs/MSMES24062019465CF8CB30594AC29A7A010E8A2A034C.PDF
[2] Ibid



Technology Driven Supply Chain Financial Solutions

Innovations in the fintech sector have enabled buyers, suppliers, and financial institutions to onboard a single platform which provides multiple benefits such as easy access to credit, improved document submission for creditworthiness evaluation, reduction in timelines, improved efficiency, and overall reduction in costs. A typical tech-driven supply chain financing solution is illustrated below.



Step 1: Buyer issues purchase order to seller

Step 2: Supplier fulfills order and issues invoice to buyer

Step 3: Supplier uploads invoice on the supply chain finance platform

Step 4: Lender picks the invoice to be financed

Step 5: Buyer confirms the invoice on the supply chain finance platform

Step 6: Lender disburses funds to supplier

Step 7: Buyer pays invoice amount to lender on the due date

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"Innovations in the fintech sector have enabled buyers, suppliers, and financial institutions to onboard a single platform which provides multiple benefits such as easy access to credit, improved document submission for creditworthiness evaluation, reduction in timelines, improved efficiency, and overall reduction in costs.

Onboarding multiple suppliers, buyers, and lenders on the technology-based supply chain finance platform (SCF Platform) allows cheaper access to credit due to competitive pricing. Furthermore, such SCF Platforms can be set up either in (i) a supplier-led model or (ii) a buyer-led model.

Supplier-Led Financing Program

In a supplier-led financing program, the lender will undertake a credit appraisal of the supplier and establish a supply chain financing program which is priced in accordance with the creditworthiness of the supplier. However, despite the benefits associated with an SCF Platform, the suppliers, which are usually MSMEs, will continue to face entry barriers due to higher cost of credit in a supplier-led model.

Buyer-Led Financing Program

In a buyer-led financing program, the lender will establish a supply chain financing program for the suppliers of a buyer, based on the credit appraisal of such a buyer. This financial innovation takes advantage of the higher credit ratings of the buyers, who are generally large corporations. As a result, the suppliers, which are usually MSMEs, have access to cheaper credit while also taking advantage of the benefits associated with an SCF Platform.

Setting Up a Buyer-led Supply Chain Financing Program

To set up a buyer-led supply chain financing program, the following steps and documentation are to be noted:

- The lender, supplier and the buyer are onboarded on an SCF Platform.
- The broader terms of the facility are agreed under a term sheet issued to the buyer and a sanction letter issued to the supplier separately.
- The lender and the buyer enter into a facility agreement (Buyers Facility Agreement) setting out the terms and conditions of the supply chain financing facility such as, inter alia, interest rates, processing charges, commission rates, tenor, and type of security.
- If the lender wishes to have a recourse to the buyer in the facility, a guarantee may be taken from the buyer under the Buyers Facility Agreement.
- Simultaneously, the lender enters into a facility agreement for a supply chain financing facility with the supplier (Suppliers Facility Agreement), which sets out in detail the various terms and conditions of such a facility and the obligations of the parties.
- Based on the credit appraisal, security may be sought from the supplier to further lower the cost of funding.
- The entire facility is administered and managed on the SCF Platform and the Buyers Facility Agreement, the Suppliers Facility Agreement and other documents may be executed digitally.

The RBI has also encouraged fintech innovations such as the Trade Receivables Discounting System (TReDS) to provide MSMEs with an e-platform for supply chain financing[3]. Further, fintech innovations such as buyer-led supply chain financing solutions offered through SCF Platforms allow the supply chain networks faster and cheaper access to credit. At the same time, given the key role that MSMEs play in the Indian supply chain infrastructure, these fintech innovations can help accelerate the growth trajectory of MSMEs.

[3] Guidelines for the Trade Receivables Discounting System (TReDS), 2 July 2018. https://rbidocs.rbi.org.in/rdocs/Content/PDFs/TREDSGD0241C8FEF214D7DAD76487274D27742.PDF

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PROMOTERS CANNOT CONTINUE TO BE IN AN INSOLVENT COMPANY IN ANY CAPACITY: SUPREME COURT

The Supreme Court closed the doors on defaulting promoters looking to keep a residual stake even after their company is sold off under the insolvency process. In the Bhushan Steel case, where the promoters held a 2.35 per cent stake even after Tata Steel acquired a 72.65 per cent stake in the company, the Supreme court ruled that ex-promoters cannot hold a stake in the insolvent firm.

In 2017, the State Bank of India (SBI) took Bhushan Steel to court. The company owed ₹59,000 crore to creditors. In May 2018, the NCLT approved Tata Steel's ₹35,000-crore resolution plan for the company. Subsequently, Bamnipal Steel, a subsidiary of Tata Steel issued a letter to ex-promoters calling upon them to sell equity shares.

In March 2022, the NCLAT dismissed an appeal filed by the Singhals that challenged the October 2021 NCLT order that asked the promoter group to sell their 25 million shares at ₹2 a piece to Tata Steel.

Calling the resolution plan "not workable", the SC reinstated the NCLAT order barring ex-promoters to continue as shareholders.

The two judge bench dismissed the appeal filed by the former Bhushan Steel promoter Neeraj Singhal's against Tata Steel for the transfer of the residual shares. The Court observed that there is no ground

for review order passed by the National Company Law Appellate Tribunal (NCLAT) which dismissed the appeal.

This move by NCLAT is seen as a positive development amongst the industry stakeholders as it will fastrack the process under the Insolvency and Bankruptcy Code (IBC) and also boost the confidence of new promoters looking to acquire stressed assets.

"According to us, the resolution plan shall not be workable at all. At this stage, it is also required to be noted that the appellants are the erstwhile promoters and therefore they cannot be continued to be in the company in any capacity may be as shareholders as rightly observed by the NCLAT," the Supreme Court order read.

NOTIFICATION OF MINIMUM WAGES CANNOT BE GUIDING FACTOR TO EVALUATE MONTHLY INCOME OF DECEASED: SUPREME COURT

The Supreme Court recently held that reliance cannot be placed on a State notification issued under the Minimum Wages Act in a motor accident claim case for the purpose of ascertaining the wage of the deceased when there is already positive evidence regarding the monthly income of the deceased. The Court was of the view that such notification can be a guiding factor only in a case where there is no clue available to evaluate the monthly income of the deceased.

The Court was hearing an appeal challenging a decision of the Punjab and Haryana High Court which had reduced the compensation awarded by the Motor Accident Claims Tribunal (MACT).

The deceased was a 25-year-old healthy person. He was stated to be working as a contractor and

was earning ₹50,000 per month. While calculating the compensation to be awarded, the tribunal took the income of the deceased to be ₹25,000 per month after taking note of the monthly instalment of ₹11,550 per month being paid by him towards a tractor loan from March 10, 2014 onwards. The entire loan liability was discharged by March 24, 2015 with payment being made even after his death.

Keeping in view of the above situations, the MACT assessed the monthly income of the deceased to be ₹25,000 per month.

However, the High Court was of the view that mere fact that the deceased had paid instalments of the loan could not itself be an evidence that the money actually represented his income or can form the basis for assessment of income of the deceased at ₹25,000. Taking into consideration the notification issued by the State of Haryana, fixing minimum wage at the relevant time, the High Court assessed the income of the deceased at ₹7,000 per month, and on this premise, the compensation granted to the appellants was reduced.

The Supreme Court disapproved of the approach of the High Court, and ruled that the tribunal's decision was correct in law as well as on facts.

"The Tribunal's approach is quite justified in law as well as on facts. In the summary proceedings where the approach of the Tribunal's determination must be in conformity with the object of the welfare legislation, it was rightly held that the monthly income of the deceased could not be less than ₹25,000. The reason assigned by the High Court to reduce the monthly income of the deceased is totally cryptic and has no rationale," the Court said.

It, therefore, set aside the decision of the High Court and restored the compensation awarded by the MACT.

TERMS OF INVITATION TO TENDER ARE NOT OPEN TO JUDICIAL SCRUTINY: SUPREME COURT

The Supreme Court set aside a Delhi High Court's order observing that the terms of invitation to tender are not open to judicial scrutiny. The High Court in its order had quashed the Airport Authority of India's tender conditions for selecting Ground Handling Agencies (GHA) agencies at Group D Airports.

The Court observed that the Delhi High Court committed a "serious error" by entertaining a writ petition at the instance of a third party - an advocacy group called Centre For Aviation Policy - when none of the GHAs challenged the tender conditions. Hence, the writ petition should have been dismissed on the ground of locus standi (Airports Authority of India versus Centre for Aviation Policy).

"In that view of the matter, it is not appreciable how respondent No.1 (CAPSR) - original writ petitioner being an NGO would have any locus standi to maintain the writ petition challenging the tender conditions in the respective RFPs. Respondent No.1 cannot be said to be an "aggrieved party", it said.

The Supreme Court further observed that even on merits, the High Court should not have interfered with the tender conditions and thus referred to various precedents regarding limited scope of judicial interference in tender conditions. The Court said:

"As per the settled position of law, the terms and conditions of the Invitation to Tender are within the domain of the tenderer/tender making authority and are not open to judicial scrutiny, unless they are arbitrary, discriminatory or mala fide. As per the settled position of law, the terms of the Invitation to Tender are not open to judicial scrutiny, the same being in the realm of contract. The Government/ tenderer/tender making authority must have a free hand in setting the terms of the tender.

"The courts cannot interfere with the terms of the tender prescribed by the Government because it feels that some other terms in the tender

would have been fair, wiser, or logical", the bench said.

AAI approached the Supreme Court against the order of the High Court dated July 14, 2021, by which it has allowed the said writ petition of the NGO and has struck down the decision to carry out region-wise sub-categorization of the 49 airports falling under Group D-1 and the stipulation that only previous work experience in respect of providing GHS to scheduled aircrafts shall be considered acceptable.

The High Court also found that the revised minimum Annual Turnover criteria of ₹18 crores as discriminatory and arbitrary.

The Supreme Court noted that the AAI explained before the High Court the rationale behind the respective conditions, namely, clustering of 49 airports into 4 region-wise sub-categories/clusters; criteria for evaluation - 36 months experience in the past 7 years in providing 3 out of 7 Core GHS and the financial capacity - Annual Turnover of ₹30 crores (modified as ₹18 crores) in any one of the last three financial years.

"Having gone through the respective clauses/ conditions which are held to be arbitrary and illegal by the High Court, we are of the opinion that the same cannot be said to be arbitrary and/or malafide and/or actuated by bias. It was for the AAI to decide its own terms and fix the eligibility criteria", it said.

SUPREME COURT ALLOWS RETROACTIVE APPLICATION OF SEBI CIRCULAR ON STANDARDISATION OF PROCEDURE TO BE FOLLOWED BY DEBENTURE TRUSTEE(S)

The bench comprised of Justice Dhananjaya Y Chandrachud, Justice Surya Kant and Justice A S Bopanna.

The Supreme Court has recently allowed retroactive application of SEBI Circular on Standardization of procedure to be followed by Debenture Trustee(s) in case of default by issuers who are listed debt securities. Accordingly, the shareholders of Reliance Commercial Finance Ltd are required carry out a voting process based on the SEBI guidelines and not just the Debenture Trust Deeds signed by the shareholders in compliance with the Reserve Bank of India (RBI) circular.

The facts of the case are straightforward. Reliance Commercial Finance Limited (RCFL) issued Non-Convertible Debentures to various persons, one of which was Vistra ITCL (India) Limited. RCFL committed its first default under the Debenture Trust Deeds in March 2019. On 7 June 2019, RBI issued the Reserve Bank of India (Prudential Framework for the Resolution of Stressed Assets) Directions 2019. The RBI Circular provided that certain lenders may opt for a resolution strategy available to them under the existing legal framework, including entering into a resolution plan or initiating legal proceedings for recovery or insolvency. If the lenders chose to implement a Resolution Plan, they were required to enter into an Intercreditor agreement (ICA). Bank of Baroda and other lenders of RCFL entered into an ICA on 6 July 2019, pursuant to the RBI Circular. Bank of Baroda was later appointed as the lead bank under the ICA. The RBI Circular applied to banks and specified categories of lenders. Other investors were outside its purview.

SEBI issued a circular on 13 October 2020 on Standardization of procedure to be followed by Debenture Trustee(s) in case of default by issuers of listed debt securities. On 11 March 2021, RCFL and Vistra amended the Debenture Trust Deeds by executing a Supplementary Debenture Trust Deed which took note of the SEBI circular. On 15 July 2021, the Resolution Plan submitted by Authum Investment and Infrastructure Limited was approved by RCFL's lenders.

On 1st July 2021 seventeen debenture holders instituted a suit in the Bombay High Court for the protection of their interests with respect to the amounts due to them by RCFL. The debenture holders urged that Vistra should have taken necessary steps to protect their interests and that certain funds available with the Bank of Baroda were distributed amongst creditors without regard to their status as secured or unsecured creditors. They also alleged that this was done without their consent and that they had a first charge on the receivables of RCFL. The debenture holders alleged that the RBI Circular permitted this illegal distribution of funds. In this case, the Bombay High Court opined prima facie that a meeting of debenture holders was required and suggested that all the concerned parties enter into a negotiated settlement. The court recorded that RCFL and the resolution applicant had agreed to pay the debenture holders an additional sum of 5% of the total principal sum outstanding as an additional settlement. Therefore, the debenture holders were to receive an aggregate sum of ₹91,00,000/- representing 29.96% of the total principal outstanding. In return, debenture holder parties to the suit would have to accept the terms of the negotiated settlement in full and final satisfaction of all their claims against the parties and agreed to transfer their debentures in favor of the resolution applicant. In the same order, the Court held that the SEBI Circular could not be permitted to operate retrospectively and did not govern the Debenture Trust Deeds. The Court directed Vistra to conduct a meeting of all debenture holders in terms of the Debenture Trust Deeds.

This order was challenged by SEBI before a Division Bench and submitted in its appeal, that the SEBI Circular is applicable and the consent of the debenture holders at the International Securities Identification Number level is necessary before a Resolution Plan could be implemented. The division bench dismissed the appeal stating that the SEBI Circular would not apply retrospectively as it did not contain any provision for retrospective application and that it would only apply in two situations – enforcement of security or entering into an ICA. The court stated that the circular wouldn't apply in this case as the debenture holders were not proposing to enforce their security or enter into an ICA. The Supreme Court was approached against this order.

Court's Analysis

The RFCL stated that the SEBI Circular would be applicable only if the debenture holders chose to enter into an ICA under the RBI Circular. According to RCFL, it is open to debenture holders to choose not to enter into an ICA. Instead, they may approve of a Resolution Plan that the lenders have formulated independent of the modalities prescribed in the SEBI Circular. It was argued that this route permitted debenture holders to approve or reject Resolution Plans based on whether their interests were properly accounted for. The court did not accept this submission due to the following reasons:

1. There is no bar to the civil court's jurisdiction

Section 15Y of the SEBI Act stipulates that no civil court shall have the jurisdiction to entertain any suit in respect of any matter which an adjudicating officer appointed under the SEBI Act is empowered to determine. Section 15-I of the SEBI Act provides that an adjudicating officer may be appointed to adjudge cases under Sections 15A, 15B, 15C, 15D, 15E, 15EA, 15EB, 15F, 15G, 15H, 15HA, 15HB. None of the sections mentioned in Section 15-I of the SEBI Act would confer jurisdiction on the adjudicating officer to grant the relief sought by the plaintiffs in the first instance. Hence, the court noted that the bar in Section 15Y would not operate as against the suit in the present case. Accordingly, the court stated that the Single Judge of the Bombay High Court (in the first instance) as well as the Division Bench of the Bombay High Court properly exercised jurisdiction over the subject matter of the suit.

2. The SEBI Circular is applicable if debenture holders wish to implement a Resolution Plan to which the lenders are a party

The court stated that by issuing the SEBI Circular, SEBI subscribed to the overall framework of the RBI Circular and permitted debenture holders to participate in the process specified in the RBI Circular to enter into a Resolution Plan. Under the RBI Circular, the Resolution Plan could not come into existence without an ICA. As per the court, the SEBI Circular did not disturb this position. When the SEBI Circular came into force, it specified the conditions under which the debenture holders (through the Debenture Trustees) could access this Resolution Plan and participate in its formulation via the ICA. The court further noted that while the SEBI Circular did not mandate the execution of an ICA as the only route to entering a compromise with the issuer company, it laid down a procedure in the event that debenture holders chose the route of implementing a Resolution Plan with the lenders. The court stated that this procedure could not be circumvented. It was further opined that–

"The purpose of the SEBI Circular is multi-fold – not only does it protect the interests of debenture holders at large (Clause 7), but it also protects the interests of any dissenting debenture holders (Clause 6.6). If RCFL's argument was to be accepted, both these protections would fail. In the absence of Clause 7, debenture trustees would likely be unable to exit the ICA or the Resolution Plan even if they were not — in the interest of investors or if the Resolution Plan was not finalized within 180 days from the end of the review period."

3. The SEBI Circular has retroactive application

The court stated that in the present case, the SEBI Circular owed its existence to statutory powers conferred by a special legislation enacted with a view to protect the interests of investors and to ensure the

stable and orderly growth and development of the market for securities. It opined that the SEBI Circular was issued partly in exercise of the powers under the 1993 Regulations. Further, Regulation 15(7) of the 1993 Regulations laid the foundation for the conditions specified in the SEBI Circular. As such, the court stated, the phrase provisions of the [1993 Regulations] in Clause 59 must be read to include the SEBI Circular and the circular would have retroactive application

4. Exercise of the Court's power under Article 142 of the Constitution

Depending upon the facts and circumstances of a case, the court noted that it can, having regard to Article 142 of the Constitution of India, stipulate suitable directions to mitigate the potential denial of rights. Thus, it stated that the compromise arrived at, which was in the interests of all the parties, would be disturbed if a new process was directed to be commenced in accordance with the SEBI Circular. the court stated that–

"In the present case, the application of the SEBI Circular will lead to a scenario where a Resolution Plan validly agreed upon by the ICA lenders under the RBI Framework will have to be unscrambled. For this reason, we consider it necessary to extend the benefit under Article 142 to the retail debenture holders by allowing the Resolution Plan to pass muster."

Accordingly, the court rejected the interpretation placed by the Division Bench of the Bombay High Court on the SEBI Circular and allowed the appeal.

'TENANT AT SUFFERANCE' LIABLE TO PAY MESNE PROFITS FOR CONTINUING TO BE IN POSSESSION AFTER EXPIRY OF LEASE: SUPREME COURT

A tenant is liable to mesne profits in the event it continues to be in own possession after the expiry of the lease, as observed by the Supreme Court. "While a tenant at sufferance cannot be forcibly dispossessed, that does not detract from the possession of the erstwhile tenant turning unlawful on the expiry of the lease.", the bench comprising Justices KM Joseph and PS Narasimha observed. The issue to be considered was whether the possession of appellant-tenant can be termed wrongful on the expiry of lease?

In this regard, the Court noted that Section 111(a) of the Transfer of Property Act, 1882 provides that the lease is determined by efflux of time, that is, on the expiry of the lease, the lease ends. Relying on the case Atma Ram Properties (P) Ltd. v. Federal Motors (P) Ltd. (2005) 1 SCC 705, the bench observed:

"A tenant continuing in possession after the expiry of the lease may be treated as a tenant at sufferance, which status is a shade higher than that of a mere trespasser, as in the case of a tenant continuing after the expiry of the lease, his original entry was lawful. But a tenant at sufferance is not a tenant by holding over. While a tenant at sufferance cannot be forcibly dispossessed, that does not detract from the possession of the erstwhile tenant turning unlawful on the expiry of the lease. Thus, the appellant while continuing in possession after the expiry of the lease became liable to pay mesne profits."

The Court further observed that:

What the landlord is entitled is, to get damages for the use and occupation at any rate, at which, the landlord could have let out the premises on being vacated by the tenant. Section 2(12), no doubt, includes profits, which the person, in wrongful possession, might, with ordinary diligence, have received therefrom. The liability of the tenant, to pay damages on the basis of the rate at which landlord could have let out the premises, may not be the same as the profit the tenant might have received with ordinary diligence...

...Once the lease comes to an end, the erstwhile tenant becomes a tenant at sufferance. He cannot be dispossessed, except in accordance with law.

But he cannot, in law, have any right or interest anymore. Even though, under Section 108 of the Transfer of Property Act, if there is no contract to the contrary, the tenant may have the right, under Section 108(j), to transfer his interest absolutely or even by sub-lease or mortgage, when the lease expires by afflux of time, his interest as lessee would come to an end.

SUPREME COURT RULES GOVERNMENT EMPLOYEES NOT ENTITLED TO LTC FOR FOREIGN TRAVEL

Reasons the purpose of the scheme was for people to gain perspective of the Indian culture by traveling within the country.

The Supreme Court has recently held that government employees cannot claim the Leave Travel Concession (LTC) for foreign trips or for a long circuitous route.

A bench comprising Former Chief Justice UU Lalit, Justice S Ravindra Bhat, and Justice Sudhanshu Dhulia stated that LTC was a payment exempted as 'income', hence, it could not be brought under any tax. However, it should be claimed within certain limitations prescribed by the law.

In the State Bank of India vs Assistant Commissioner of Income Tax case, the judges held that the travel must be done from one designated place to another within India.

This meant the LTC was not for foreign travel. It was given to a government employee for the shortest route between two places.

The bench, thus, dismissed an appeal filed by the State Bank of India (SBI) against the January 2020 Delhi High Court order.

The court had upheld the findings of the Income Tax Appellate Tribunal (ITAT) that the bank failed to deduct the income of its employees at the source.

Several employees of SBI had travelled to foreign countries and claimed LTC. But the bank said they claimed the LTC for travel within India and not abroad. The fact was that they travelled from Delhi-Madurai-Columbo-Kuala Lampur-Singapore-Columbo-Delhi, adopting a circuitous route. And SBI fully reimbursed their claims. Still, it maintained no payment was made for foreign travel, though a foreign leg was a part of the itinerary undertaken by the employees.

The IT department argued that SBI was an 'assessee in default' for failing to deduct the tax from the employees claiming LTC in violation of the law.

It reiterated this defied the LTC scheme, the Income Tax Act, and the Income Tax Rules.

The apex court upheld the finding of the high court that the amount received by the employees of SBI towards the LTC claim was not liable for exemption as they visited foreign countries, which was not permissible.

The bench observed, "It is difficult to appreciate how the appellant, an assessee-employer, failed to consider this aspect. This was the elephant in the room."

The bench underscored, "LTC is for travel within India. There should be no ambiguity on this."

The court reasoned that the contention of SBI that there was no specific bar on foreign travel and a foreign journey could be availed if the starting and destination points remained within India, was without merit.

The bench further held that foreign travel negated the essential purpose of LTC.

It ruled, "The basic objective of the LTC scheme was to familiarize a civil servant or a government employee to gain some perspective of the Indian culture by traveling in this vast country. It is for this reason that the 6th Pay Commission rejected the demand of paying cash compensation in lieu of LTC. It also rejected the demand for foreign travel."

HIGH COURT & TRIBUNAL NEWS AROUND THE NATION

BOMBAY HIGH COURT

BOMBAY HIGH COURT DIRECTS NGT TO SET UP A BRANCH IN GOA TO HEAR MATTERS

The Bombay High Court has ruled that the chairperson of the National Green Tribunal (NGT) has no power under the National Green Tribunal Act, 2010 to constitute special benches to hear environmental matters, and then arbitrarily decide on such matters.

The judgment of the three-judge bench comprising Chief Justice Dipankar Datta, Justice G.S. Patel and Justice M.S. Sonak is expected to have far-reaching consequences.

The ruling came on a writ petition filed by advocate Norma Alvares on behalf of the Goa Foundation.

The court set aside five notices issued by the registrars of the Delhi and Pune branches of the NGT. These 'special benches' were presumably constituted under the 'competent authority', which meant the chairperson. However, the court noted that the NGT Act had no such provision.

The bench stated that to decide matters, the statute required a regular bench to necessarily have an expert member and a judicial member. It added there was no sanction for a bench comprising five members (three judicial and two experts), which was invariably the constitution of the special benches.

Justice Patel, who wrote the judgment, had in 2017 struck down an order of the Ministry of Environment and Forests, transferring the jurisdiction of Goa matters to the Delhi, NGT. He repeated his recommendation made earlier that Goa needed a circuit bench of NGT.

The bench added, "We, therefore, reaffirm such recommendation that far from moving Goa-centric matters away from Pune, we must endeavor to set up a circuit bench in Panaji. This is the only way that true access to justice can be achieved, which is a part and parcel of the right to life of every individual."

BOMBAY HIGH COURT REFUSES INTERVENTION IN PLEAS BY ASIANET, DISNEY INDIA, STAR INDIA AGAINST CCI

The Bombay High Court has refused to exercise its territorial jurisdiction in the petitions filed by three broadcasting companies, Asianet Star Communications, Disney Broadcasting (India) Pvt Ltd., and Star India. But directed the petitioners to furnish documentary material in response to the queries in the competition regulator's order

The petitions were filed in furtherance of an order of the Competition Commission of India (CCI) initiating an investigation against the companies.

The petitioners requested the court to extend the interim order granted in April 2022 directing the CCI to not take any coercive action against the three broadcasters and media and entertainment companies.

The Bench comprising of Justice SV Gangapurwala and Justice Madhav Jamdar clarified that while they had held they were not exercising territorial jurisdiction, they had not held they did not have inherent jurisdiction to hold old orders void ab initio.

While allowing the request, the bench stated that considering the interim order was in force for almost five months, it was being continued for another 10 days. But after the lapse of the duration, the protection would end.

The court also directed the petitioners to furnish to the Director General, CCI, without prejudice and no-equities basis, the documentary material required in response to the queries in the order.

The petitioners challenged the February 2022 CCI order, directing its Director General to initiate an investigation under the Competition Act based on a complaint filed by Asianet Digital Network Private Limited (ADNPL).

ADNPL deals in the business of distribution of TV channels to customers through local cable operators, predominantly in Kerala. In its complaint, it contended that the broadcasters should not have discriminatory pricing in commercial contracts with multi-service operators.

ADNPL referred to the regulations of the Telecom Regulatory Authority of India (TRAI) and the Telecom Disputes Settlement and Appellate Tribunal (TDSAT).

The regulations prohibit discriminatory pricing in commercial contracts with multi-service operators.

The complaint mentioned that the petitioners abused their position of dominance by providing significant discounts to a direct competitor through allied agreements that apparently offered a cashback system.

They bypassed the regulations and provided ADNPL's competitor with an unfair advantage.

The CCI ordered the Director General to investigate and submit a report within 60 days.

ADNPL challenged the order before the high court. But CCI opposed the petition on the point of jurisdiction. It stated that since the entire issue arose in Kerala, the challenge must also be in a court of the state.

However, ADNPL submitted that the petitioners were subverting the TRAI/TDSAT norms causing prejudice to it. It contended that all that CCI intended to do was data collection.

After hearing the arguments of both parties, the court concluded it would not exercise its territorial jurisdiction.

DELHI HIGH COURT

DELHI HIGH COURT ORDERS BLOCKING WEBSITE OFFERING FAKE 'WORK FROM HOME' JOBS

The Delhi High Court has directed the immediate blocking of a fraudulent website registered under the domain name https://india-mart.co/, which is engaged in the practice of duping the public by offering work-from-home jobs by charging them a fee.

The bench comprising Justice Pratibha Singh while hearing a trademark infringement suit Indiamart Intermesh Ltd. vs Sameer Samim Khan ruled that irreparable damage could be caused to the public at large by the fraudulent activities of the website.

Indiamart claimed that Khan, the defendant, launched the website under the domain name 'https://india-mart.co/' and was fraudulently offering jobs using the 'Indiamart' mark and name in an unauthorized manner.

Khan was luring gullible persons and offering them 'work from home' jobs under the 'Indiamart's Data Entry Project'.

For this purpose, various plans were available after the application fees of ₹899-₹1199 was paid.

The court passed an ex-parte ad interim injunction in favor of Indiamart, a business-to-business portal providing an internet-based marketplace with free and paid listings for the promotion of industry, products, and services.

The bench held, "It is clear that the defendant is indulging in fraudulent activity by showcasing itself as the plaintiff/plaintiff's representative and collecting money by allegedly offering job opportunities."

It held that Indiamart had successfully made out a prima facie case for grant of an injunction.

The court's order stated, "If the activities of the defendant are not nipped in the bud, irreparable damage would be caused not only to the plaintiff, but also to people, who may be deceived by the defendant."

The court ordered restraining the defendant's website from using the mark, name, or the domain name, 'Indiamart' or any other mark or name or domain name identical to it.

The bench further directed the immediate blocking of the fraudulent website and the locking and suspension of the domain name.

The judge also asked the domain name registrar, GoDaddy, to place on record the details of the person who had registered the domain name.

Further, the Assistant Commissioner of Police, Cyber Crime Unit was directed to investigate the matter and file a status report by the next date of hearing.

Meanwhile, the counsel for Union Bank of India assured the court that the bank account of the defendant would be frozen with immediate effect.

Advocates Sidharth Chopra, Nitin Sharma, Deepika, Naman Tandon, and Yatinder Garg appeared for Indiamart.

Advocate Nazia Parveen represented the Union Bank of India, advocate Hetu Arora Sethi appeared for the Delhi Police and advocate Raman Lamba appeared for the Intelligence Fusion & Strategic Operations of the Delhi Police.

ORISSA HIGH COURT

ARBITRATOR CAN AWARD SEPARATE INTEREST ON CLAIMS: ORISSA HIGH COURT

The Orissa High Court in its recent judgment has held that the arbitrator can award separate interest on claims which are in nature of interest for delayed payment. The bar under Section 3 of the Interest Act, 1978 does not apply interest under the Arbitration and Conciliation Act (A&C Act), as held by the bench. It was additionally noted that under Section 31(7)(a) of the A&C Act there is no bar on the grant of interest on interest. The Court further held that a party cannot challenge the arbitral award on the ground that the arbitration clause from the original agreement was scored out unless such an issue was raised before the arbitrator.

The present issue arose when the parties entered into an agreement for the purpose of executing the project work. However, due to a two-year delay in making payment against the final bill, the respondent invoked the arbitration clause.

The arbitrator rejected the application filed by the appellant under Section 16 of the Act. The arbitrator passed the final award and allowed the claims of the respondent. Aggrieved by the award, the appellant challenged it under Section 34 of the Act, however, the lower court dismissed the application and upheld the award. As a result, the appellant filed an appeal under Section 37 of the Act. The appellant submitted that the arbitrator had erred in allowing interest on claims that were purely claims of interest due to alleged delay in payment, therefore, the arbitrator has erred in allowing interest on interest which is prohibited under the Interest Act, 1978.

On the perusal of the facts and submissions, the Court rejected the contention of the appellant that the arbitrator could not award interest on interest, and held that Claim No. 1 & 5 were claim of damages in the form of interest due to delay in release of payment. Moreover, there is nothing in the A&C Act that prevents grant of interest on interest. The Court held that the arbitrator can award separate interest on claims which are in nature of interest for delayed payment. It held that bar under Section 3 of the Interest Act, 1978 does not apply interest under the A&C Act. Further, it held that under Section 31(7)(a) of the A&C Act there is no bar on the grant of interest on interest.

The appeal was thus dismissed.

MADHYA PRADESH HIGH COURT

POWER TO COMPOUND AN OFFENSE EITHER BEFORE OR AFTER THE INSTITUTION OF PROCEEDING, BUT NOT AFTER CONVICTION: MADHYA PRADESH HIGH COURT

The Madhya Pradesh High Court, Indore Bench recently held that pursuant to Section 279(2) of the Income Tax Act, the prescribed Authorities have the power to compound an offense either before or after the institution of proceeding against the assesses but certainly not after their conviction.

Interpreting the guidelines issued for compounding of the offense under Direct Tax Laws, 2019 in the context of Section 279(2) of the Act, the division bench observed-

Clause 7 of the guidelines provides eligibility conditions

for compounding and clause 8 provides a list of certain offenses which are normally not be compounded. In order to become eligible for compounding clause 7(v) says that there has be to an undertaking by the assesses for withdrawal appeal filed by him, if it is related to the offense sought to be compounded.

Likewise, clause 8(iii) provides that offense committed by a person for which he was convicted by a Court of law under direct taxes laws compounding cannot be done. As on today, the petitioners are convicted persons and in appeal, only the sentence has been suspended not the conviction, therefore, respondent No. 1 has rightly declined to compound the offense.

The Petitioners were convicted for offense punishable under Section 276C(i) of the Income Tax Act by the lower court. Challenging their conviction, they preferred an appeal before the appellate court. Simultaneously, the Petitioners also moved an application before the Authority concerned for compounding of offense. They also moved an application before the appellate court under Section 320(5) CrPC seeking permission for the compounding of offense.

The Authority rejected the application of the Petitioners on the ground that their request could not be considered as they were already convicted. Thereafter, even the appellate court rejected their application under Section 320(5) CrPC, holding that it could not direct the Authority for compounding the offense. Aggrieved, the Petitioners moved the High Court. Examining the submissions of parties and documents on record, the Court concurred with the decision of the Authority to not compound the offense of the Petitioners.

The Court noted that a combined reading of the relevant provisions under the guidelines concerned and Section 279(2) of the Act would reveal that the compounding of offense after conviction is not prescribed. The Court further observed that the benefit under the guidelines could not be claimed as a matter of right - By conjoint reading of section 279(2) and clauses 7(v) and 8 (iii), it is explicit that the Income Tax Authorities have the power to compound the offense either before or after the institution of the proceedings but certainly not after the conviction.

Clause 4 of the policy also provides that compounding of offense is not a matter of right, however, the offense may be compounded by the competent authority on satisfaction prescribed in these guidelines. It is also important to see Clause 7.(ii) which provides that no application of compounding can be filed after the end of 12 months in which a prosecution complaint, if any, has been filed in the court of law.

With the aforesaid observations, the Court refused to interfere with the impugned order and accordingly, the petition was dismissed.

NCLAT

PERMITTING SUCCESSFUL RESOLUTION APPLICANT TO WITHDRAW AFTER THE PLAN HAS BEEN APPROVED WILL HAVE SERIOUS DISASTROUS EFFECT: NCLAT

An appeal filed by the Resolution Applicant seeking permission to withdraw its resolution plan has been dismissed by the National Company Law Appellate Tribunal (NCLAT) and it was held that allowing withdrawal of a resolution plan will have serious disastrous effect on the whole purpose of the Insolvency & Bankruptcy Code, 2016 (IBC/Code).

The appeal was filed against the order dated 21.07.2022 passed by NCLT Indore which relying upon the judgment of Supreme Court in Ebix v. Educomp dismissed the application filed by Appellant seeking withdrawal of the resolution plan.

It was contended by the Appellant that the judgment of Ebix is not applicable as the same deals with the cases where the Corporate Debtor has undergone changes but in the present case, the Appellant is seeking withdrawal due to the financial difficulty being faced by the Appellant.

The Bench rejected the argument of the Appellant and held that even if the Appellant is allowed to withdraw from the plan due to financial difficulty, the same will amount to go back from the commitment made in the resolution plan which is not permissible.

"The IBC process consists of different steps with a ultimate object of reviving the Corporate Debtor. Permitting Successful Resolution Applicant to withdraw after the Plan has been approved will have serious disastrous effect on whole purpose and object of IBC."

Accordingly, NCLAT dismissed the appeal filed by the Appellant and upheld the order of NCLT, Indore.

NCLAT DISMISSES APPEALS FILED BY THE MURUGAPPA GROUP AGAINST NCLT

The Chennai bench of the National Company Law Appellate Tribunal (NCLAT) has dismissed the appeals filed by Ambadi Investments Limited, the holding company of the Murugappa Group, challenging an order of the National Company Law Tribunal (NCLT). NCLT had allowed an application filed by Valli Arunachalam, the eldest daughter of the late executive chairman MV Murugappan of Murugappa Group, and her family to withdraw an 'earlier' waiver petition.

The bench of Justice M Venugopal (judicial member) and Kanthi Narahari (technical member) observed that NCLT's views had no legal flaws.

Following the death of her father in 2017, Valli, her sister and their mother held an 8.21 percent stake in Ambadi. Valli hit the headlines in 2020 when she openly accused the Murugappa Group of denying her a seat on the board of Ambadi despite having a substantial stakeholding. She also alleged gender bias in not appointing her.

Thereafter, Valli dragged Ambadi to the tribunal under a company appeal in an alleged oppression and mismanagement case.

On the other hand, Ambadi moved the NCLAT with an appeal that NCLT's order had wrongfully allowed the withdrawal of the first waiver application. It argued that the second waiver application was filed for the same cause of action as the first waiver application and was barred under the law.

The NCLAT bench stated, "Going by the tenor and spirit of the Companies Act, 2013, it is held that the ingredients of the Civil Procedure Code are inapplicable in stricto sensu of the term."

Ambadi pointed out that the first waiver application was full of errors and required dismissal. However, NCLT had allowed Valli to withdraw the application and file a fresh application, along with a new company petition.

In March 2021, while approaching the NCLT, Valli and her mother M V Valli Murugappan (collectively referred to as the MVM family), made the holding company Ambadi respondents No. 1 and Murugappa family members respondents No. 2-10.

Valli, her sister and their mother sought a waiver of the minimum 10 percent shareholding required to ensure the alleged oppression and mismanagement case against Ambadi. They also sought board representation or alternatively for the 8.21 percent stake in the company to be bought out.

Valli argued before the NCLAT that the first waiver application was withdrawn entirely without any effective hearing being conducted. Thereafter, a fresh company petition and a fresh waiver application were filed.

She submitted that Ambadi and Murugappa Group members avoided hearing on merits of the matter and prayed for the dismissal of the appeals.

LEGAL UPDATES FROM ACROSS THE GLOBE

United States

CALIFORNIA STATE LEGISLATURE PASSES BILL FOR EMPLOYERS TO POST SALARIES OF JOB LISTINGS; GOVERNOR TO VETO OR APPROVE BY SEPT 30

The California State legislature recently passed a law requiring all employers to post salaries for job listings. The law also requires businesses with over 100 employees to disclose pay scales by gender, race and ethnicity. The data relating to the same will available in the public domain. California Gov. Gavin Newsom will either approve or veto the bill by September 30.

In comparison to the current law which requires the reporting of only numerical counts of employees by race, ethnicity and sex within each job category and pay band, through the new regime all employers will be required to report hourly pay (both median and mean) by each combination of ethnicity, race, and sex for all positions. In addition to this, all businesses over 100 employees hired through labor contractors will also be required to disclose pay data, along with race and gender data. On the other hand, smaller businesses with over 15 employees would also need to post a pay scale for all open positions.

In the event the employer fails to report the aforementioned, he won't be penalized for the first offense as long as the job listings are updated. All businesses of all sizes will also need to deliver pay scales for existing positions if an employee requests this information. Currently, businesses are already legally required to provide applicants with the relevant pay scales for open positions.

The California Chamber of Commerce has however, opposed the bill describing it as a "job killer". It was further stated that with this bill hiring process "more burdensome", as well as "encourage lawsuits against businesses" based on "broad, unreliable data collected by the state". Employers across California, and other states and cities pushing for pay disclosure, are also in opposition. While they say they agree with the importance of pay transparency and equity, employers are unhappy with how these goals are being implemented. Out of the many responsibilities of business owners, hiring and recruitment is one of the most difficult. It takes businesses 36 working days on average to fill an open position, while entry-level positions are most challenging to fill for over 40% of companies. Moreover, 41% of businesses say just one bad hire ends up costing roughly $25,000, Forbes reports.

In addition to an efficient hiring process, choosing the right business structure is also an essential step for business success. Not only does opting for an unsuitable structure result in potential tax ramifications, but it also can potentially result in the business shutting down completely. Most small businesses (around 35%) in the U.S. are limited liability companies (LLCs). An LLC can be formed in any state regardless of where the business is based, although the home state is usually most convenient. Delaware, in particular, is widely considered a business-friendly state and a popular choice for LLC formation. Filing fees and franchise taxes are notably low in Delaware. On the other hand, Florida is similarly considered a business-friendly state where it's more affordable to create and maintain an LLC. The process of how to setup an LLC in Florida is also a relatively simple one. And, since the state has no minimum capital requirement, an LLC can be formed here with any amount of money.

If Governor Newsom approves the bill, the described pay scale disclosure requirements will come into effect on January 1, 2023, while the new pay data reports (including mean and median pay gap information) will be required from May 10, 2023. It's therefore imperative California businesses act now to help ensure compliance by, for example, gathering and assessing data in order to highlight places where changes are needed.

MCGUIREWOODS BROADENS ITS LIFE SCIENCES PATENT LITIGATION WITH NEW TRIAL LAWYERS

McGuireWoods has broadened its life sciences patent litigation coverage with the hire of a pair of experienced trial lawyers from Winston & Strawn.

Michael Nutter and Merritt Westcott join the firm as partners, with Nutter taking up residence in Chicago where he will lead the firm's pharmaceutical and life sciences patent litigation group, while Westcott will be based in Houston.

Nutter focuses on advising generic drug companies in patent infringement matters and helping companies develop and launch generic medicines. Westcott, on the other hand, handles a range of drug patent litigation cases and other related disputes such as medical and clinical devices.

With an experience of over 18 years at Winston, Nutter was an associate at Michael Best & Friedrich and legacy firm Jenkens & Gilchrist previously. He started his career at Wallenstein Wagner & Rockey. Westcott, meantime, spent more than 11 years at Winston and the same amount of time at legacy firm Howrey before that. Nutter is the firm's fifth partner to join in Chicago this year, following the arrivals of antitrust litigator Holden Brooks, healthcare lawyer Rubin Pusha, product liability litigator Patrick Clyder and deal lawyer Jason Griffith. Westcott is also the latest addition to the firm's Houston office following litigation partner Jeremiah Anderson's arrival in July from King & Spalding.

SIDLEY REPRESENTED CHAMBER OF DIGITAL COMMERCE IN CONNECTION WITH SEC V. RIPPLE CASE

Sidley is acting as the legal representation for Chamber of Digital Commerce in connection with its amicus curiae brief in the SEC v. Ripple case currently pending in the U.S. District Court for the Southern District of New York. The Chamber submitted a motion for leave to file its amicus brief in this case to be a true "friend of the court" and provide a legal framework based on settled SEC jurisprudence to create a predictable legal environment for the blockchain industry.

The decision in this case will have implications for blockchain market participants, including investors, trading platforms, and technology companies that seek to facilitate both securities and commercial transactions in digital assets.

In 2020 the SEC filed suit against Ripple Labs and its executive leadership, claiming Ripple's XRP digital asset was a security. In its brief, the Chamber does not take a view on whether Ripple's offer and sale

of XRP is a securities transaction or on the merits of any arguments made by either party in the case.

The Chamber laid out the applicable legal precedent for initial offerings of digital assets and made the court aware that no federal law (or regulation) governs the legal characterization of a digital asset recorded on a blockchain. The Chamber also urged

the court to clarify that the law applicable to an investment contract is separate and distinct from the law applicable to the subject of that investment contract. The Chamber further suggested that the court defer to the legislative branch to provide clear guidance for rulemaking, and cites several current legislative proposals that might provide appropriate guidance.

In a Press Release by Chamber of Digital Commerce Perianne Boring, Founder and CEO of the Chamber of Digital Commerce said, "SEC v. Ripple represents an opportunity for the court to shape the legal framework and rules of the road for the digital assets industry. Our preference would always be action by policymakers to set a clear and consistent set of rules for our industry. Absent that, however, this case appears to be a precedent-setting forum that will influence the digital asset marketplace in the U.S. moving forward."

The Sidley team was led by partner LilyaTessler. This amicus curiae filing builds on the Chamber's previous amicus brief in the 2020 SEC v. Telegram litigation, in which a Sidley team led by LilyaTessler also represented the Chamber.

PRIVATE EQUITY SPECIALIST BOLSTERS DLA PIPER IN NEW YORK

DLA Piper has announced the addition of Oliver Olah as a partner in the firm's New York office. With this addition, DLA Piper aims at expanding its Private Equity practice, wherein Olah will primarily focus in domestic and cross-border private equity, mergers and acquisitions, corporate finance, equity investments, and general corporate representation.

Olah has experience across a wide variety of industries, focusing on technology, energy, infrastructure, and consumer products, with an emphasis on US and European inbound and outbound transactions. Some of his notable experience includes representing the venture capital arm of a European media conglomerate in its early-stage investments in startups spanning online retail, telecommunications and digital media; representing the merchant banking division of a US financial institution in connection with its equity investment in an oil and gas company; and representing a German water technology company in its proposed acquisition of certain water filter assets.

In his role, Olah will advise private equity investors and their portfolio companies, financial institutions, corporate clients and senior management across multiple jurisdictions with matters relating to buy-side and sell-side assignments, acquisitions, divestitures, joint ventures, co-investments, venture capital deals, restructurings and strategic investments. Additionally, he will also advise on other transactional and investment matters involving corporations, limited liability companies and partnerships.

Oliver Olah

In addition to the US, Olah is qualified in the UK and Germany. Particularly in Europe, he has extensive experience advising primarily middle market and also large cap companies in mergers and acquisitions and private equity transactions.

"DLA Piper has an outstanding private equity platform and tremendous cross-border M&A capabilities, not to mention their impressive track record in deals in technology and other high growth industries," said Olah. "I look forward to joining the team and growing my practice."

With more than 125 US lawyers who provide strategic counsel to private equity funds and their industry-leading portfolio companies, DLA Piper's Private Equity practice has the capacity, experience and relationships to help drive value across the investment life cycle by delivering responsive, efficient and integrated solutions around the world.

Singapore

NORTON ROSE FULBRIGHT'S SINGAPORE OFFICE CELEBRATES 40 YEARS

This year marks the 40th anniversary of Norton Rose Fulbright's Singapore office. Opened in 1982, Norton's Singapore office is one of the largest and longest-standing of any international law firm in the city.

The firm's Singapore team is widely recognized as a leader in banking and finance, dispute resolution, international arbitration, and corporate, M&A and securities across a range of industries, including aviation, energy, financial services, infrastructure and commodities, shipping, and technology.

In 2018, Norton Rose Fulbright entered into a Formal Law Alliance (FLA) with Ascendant Legal LLC. The FLA is in addition to the firm's local Qualifying Foreign Law Practice (QFLP). Norton Rose Fulbright is one of only two international laws firms in Singapore to have both a FLA and the QFLP.

In addition to the firm's focus on developing local talent and increasing access to careers in law, the Singapore office has recently revamped its trainee program and dual qualification scheme by offering a new learning and training pathway for local graduates.

Europe

INSTAGRAM SLAPPED WITH A €405 MILLION PENALTY FOR BREACHING EU'S GDPR

The European Union privacy regulators have fined Instagram with a €405 million penalty for a breach of the EU's General Data Protection Regulation (GDPR).

The decision came on a long-running complaint related to how the social media platform handles children's data.

This Instagram penalty is the largest GDPR penalty the social media giant has been hit with to-date following a $267 million penalty levied upon the Meta-owned messaging platform WhatsApp last September for violations of the GDPR's transparency principle.

The complaint was registered with respect to the platform's processing of Children's data for business accounts and on a user registration system which was found to lead to the coots of child users being set to "public" by default, unless the user changed the account settings to set it to "private".

The GDPR contains strong measures requiring privacy by design and default generally — as well provisions aimed at enhancing the protection of children's information specifically and ensuring that services targeting kids are living up to transparency and accountability principles (such as by providing suitably clear communications that children can understand).

EU COURT TO FINE GOOGLE €4.1 BILLION FOR ANTI-COMPETITIVE PRACTICES

A European Union court upheld the decision of the European Commission decision that Google was engaged in anti-competitive practices and as a result violated European Union competition rules. The General Court however, lowered the previously imposed €4.3 billion fine to €4.1 billion.

The EC fined Google in 2018 for anti-competitive practices in violation of Article 102 of the Treaty on the Functioning of the EU and Article 54 of the European Economic Arena Agreement. A lower court upheld the fine of €4.3 billion against Google. Google appealed the decision.

On appeal, the General Court found that Google violated anti-competition rules, in agreement with the lower court's decision. The case was largely focused on Google's business practices regarding its Android operating system. According to the EC, approximately 80% of all smart mobile devices used in Europe in 2018 were Androids. The EC claimed Google imposed contractual restrictions which promoted Google's dominant position in the market. These restrictions included: restrictions requiring original equipment manufacturers to pre-install Google Search and Chrome to receive a license to use its app store; restrictions in anti-fragmentation

agreements with manufacturers; and restrictions that shared advertising revenue with manufacturers and operators that agreed to not pre-install a competing search service.

Although Google's appeal was largely dismissed, the Court however agreed to lower the fine amount on the basis of the recalculations of the ad revenue sharing agreement restrictions.

Google is entitled to appeal this decision to the EU Court of Justice.

United Kingdom

ATSUTOSHI MAEDA TO LEAD ANDERSON MORI & TOMOTSUNE'S LONDON OFFICE

Atsutoshi Maeda

The Japanese law firm has sought to expand its reach outside Asia for the first time.

Anderson Mori & Tomotsune (AMT) has opened an office in London. It will be led by corporate partner Atsutoshi Maeda, who has been with the firm for almost 15 years. For eight years, he represented the firm's Singapore office.

The firm will offer advise to European companies seeking to invest in Japanese entities or real estate via M&A or joint venture transactions. (The Japanese Yen fell to a 24-year low against the dollar this week, making Japanese investments cheaper for foreign investors).

The firm would also advise clients on international disputes related to their businesses in Japan and legal issues related to entry into the Japanese market. These include group restructuring or employment matters.

AMT intends to rely on its network of relationships with local firms in Europe to advise Japanese companies seeking to do business in the region.

AMT is one of the largest full-service international firms in Japan, comprising over 600 legal professionals.

The London office is AMT's eighth outside of Japan but it is the first outside of Asia. It has a presence in Beijing, Bangkok, Hong Kong, Shanghai, Ho Chi Minh City, Singapore, and Jakarta. And three offices in Japan – Tokyo, Nagoya, and Osaka.

In June 2020, the firm launched an alliance with Singapore firm DOP Law Corporation to allow it to offer local legal advise, adding to similar arrangements in its Jakarta and Hong Kong offices where it has alliances with H&A Partners and Nakamura & Associates, respectively.

In December, the firm set up a foreign law joint enterprise to allow its foreign lawyers to become partners, using the same structure that international law firms use to hire local lawyers in Japan.

EVERSHEDS SUTHERLAND ADDS INSURANCE PARTNER IN LONDON

Eversheds Sutherland has announced the appointment of Mark Everiss as insurance partner to strengthen its financial services disputes team in London.

Everiss has been hired from Cooley, where he helped found Cooley's London office back in 2015. Additionally, Everiss has led the West Coast firm's global insurance practice group for the past five years.

He has extensive experience of over two decades in the insurance and reinsurance sector, particularly in advising clients in relation to third-party liability, onshore and offshore energy, financial institutions and employers' liability matters, among others.

Prior to his time at Cooley, Everiss was a partner at Edwards Wildman Palmer, where he was co-chair of the firm's international reinsurance group. He was one of 12 Edwards Wildman partners who joined Cooley in January 2015 from Edwards Wildman's unsettled London office just as it was merging with fellow US firm Locke Lord. He has been involved with

Mark Everiss

the Insurance and Reinsurance Legacy Association as a director and company secretary since 2007 in addition to his work in private practice.

Everiss said: "I'm delighted to be taking on such an interesting and challenging role at the firm. Working closely with Simon, my plan is to help grow our contentious insurance and reinsurance capabilities and help develop our talented lawyers in support of ourselves clients' strategic goals."

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