LEGAL MEDIA GROUP

LEGAL ERA

BY THE PEOPLE. FOR THE PEOPLE. OF THE PEOPLE

www.legaleraonline.com | ₹ 100 | US$ 30| £ 20 | August 2021 | Vol. XII | Issue IV| Pages 126

INDIA CSR AMENDMENTS 2021

IMPACT ON BUSINESS SENTIMENT

The Evolution of Wealth Management in India and the Middle East

New Strategic Choices: Indian Supreme Court Rules That Two Indian Parties Can Choose A Foreign Seat Of Arbitration

Rise Of The Drones Potential Issues Under The GST Law

CREDITS

Ashok Kumar Raizada
Chairman &
Editor-in-Chief

Aakriti Raizada
Founder &
Managing Editor

Vishal Sharma
Director

HONORARY & ADVISORY BOARD

Justice B.N. Srikrishna
Former Judge
Supreme Court of India

Justice Dipak Misra
Former Chief Justice
Of India

Justice Arjan Kumar Sikri
Former Judge
Supreme Court of India

Dr. Lalit Bhasin
President, SILF
Former President of Bar
Association Of India

Amarjit Singh Chandhiok
President Elect
Bar Association Of India

Rafique Dada
Senior Advocate
Bombay High Court

Janak Dwarkadas
Senior Advocate
Bombay High Court

Darius Khambata
Senior Advocate
Bombay High Court

EDITORIAL TEAM

Consulting Editors
Robert Wyld
Partner, Johnson Winter & Slattery, Sydney, Australia
Geoffrey D. Creighton
Chief Executive Officer, In-House Counsel Worldwide, BlackRock Canada IRC
Editorial Team
Madhavi Gokhlay, Aditi Shrivastava, Kavita Krishnan, Ajay Jha

ART

Urmila S More, Swapna P Jadhav

ADVERTISING & SALES

Santosh Chauhan, Shruti Singh, Krishna Kumar Jaiswal

Circulation & Subscription
+91 8879694922 | subscription@legalera.in

PRINT

Printed & Published By
Aakriti Raizada on behalf of ARAYANNA TECHNO-LEGAL SOLUTIONS PVT. LTD.
Published At
301-302, 3rd Floor, Om Palace, Dr Ambedkar Road Junction,
Bandra West, Mumbai - 400 050, India
Managing Editor: Aakriti Raizada
Printed At
Mumbai, Maharashtra, India
All India Distributors
CNA Distributors
4-E/15, Jhandewalan Extn. (2nd Floor), New Delhi - 110 055
A. H. Wheelers & Co Pvt. Ltd.
23, Lal Bahadur Shastri Marg, Allahabad - 211 001, UP

FOR ADVERTISEMENT QUERIES, CONTACT

E-mail: info@legalera.in, marcom@legalera.in
+91 9967255222, +91 8879694922, +91 -22 -2600 3300
Corp. Office
301-302, 3rd Floor, Om Palace, Dr. Ambedkar Road Junction,
Bandra West, Mumbai - 400 050, India

Title Registration No. MAHE NG129 82/13/1/2011-TC RNI No. MAHENG/2011/46887

Legal Media Group

August 2021 | Vol. XII | Issue IV

First published in March 2010
Legal Era aims to provide "in the trenches" editorial that gives Common Man, Law Students, Lawyers, Business Leaders and Corporate Managements a detailed outlook of the current legal scenario.

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

-Aakriti Raizada
Founder & Managing Editor

SUBSCRIPTION SERVICE

Subscribe to Legal Era Magazine
E-mail: info@legalera.in
Tel: +91 8879694922
Post: Legal Era
301-302, 3rd Floor, Om Palace,
Dr. Ambedkar Road Junction, Bandra West,
Mumbai - 400 050, India

NEWSLETTER & WEBSITE

Make our newsletter your daily dose of national and international legal news. Our website keeps abreast with all the latest updates you need to know about the legal fraternity.

Game of Skills

Online fantasy gamers can now breathe easy with the Supreme Court (SC) on July 30 putting an end to the controversy surrounding the format by ruling that it is a game of skills and does not amount to gambling. In so doing, the SC has dismissed a Special Leave Petition (SLP) that challenged a Rajasthan High Court (HC) order.

The Rajasthan HC had endorsed the Punjab & Haryana HC and Bombay HC judgments which agreed with Dream11 – the Indian homegrown online fantasy gaming platform – that what they were offering was a game of skills. Whereas the SLP alleged that Dream11's online fantasy sports (OFS) format amounted to gambling, wagering and betting and was not a game of skills.

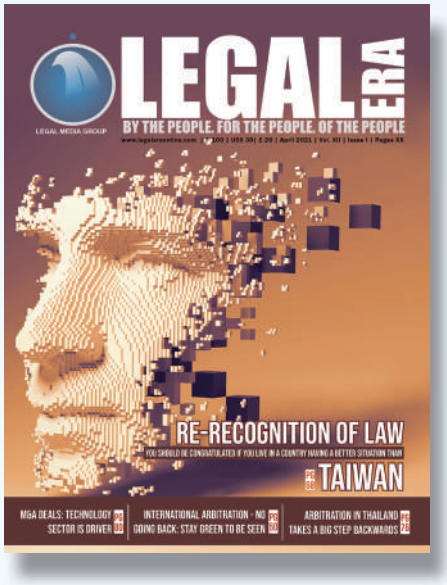
The Co-founder and CEO of Dream11, Harsh Jain, responded to the SC verdict saying he was happy that the top court had upheld the legality of their OFS format. "We reiterate our commitment to driving sports engagement through fantasy sports, which brings sports' fans closer to the sports they love and helps build a larger sports ecosystem in India," he reportedly said.

In another public interest litigation (PIL) – Ravindra Singh Choudhry versus the state – the Rajasthan HC had mentioned specific best practices from the charter of the Federation of Indian Fantasy Sports Federation namely, the resemblance that an online fantasy sports contest bore to a real-life match, the similarity between an online fantasy sports team and a real-world team, the contest running for the full duration of the match, and no changes in team being allowed after the match began. Dream11's format is based on that approved by the Federation of Indian Fantasy Sports Federation. With the SC's seal of approval to Dream11's OFS format, the legality of similar such formats will be challenged based on deviation from the set standard.

Meanwhile, this edition of Legal Era magazine carries a lot of interesting articles, including one reviewing four years of GST, another looking at the SC's approval of foreign-seated arbitrations between Indian parties and the right to seek interim relief before Indian courts, a third about the SC allowing an emergency award in the case of Amazon.com versus Future Retail Limited and so on. Don't miss out on these or the remaining reads in our issue and do write in with your raves and rants so we can keep at enhancing your reading pleasure!

Aakriti Raizada

'LEGALLY LOVED' BY THE PEOPLE. FOR THE PEOPLE



Legal Era is a high quality magazine and resource for lawyers. A great source of information on developments in the law, both India centric and global, it provides an extremely useful insight into the significant deals and decisions to be aware of, as well as the decision makers behind them.

Phillip D'Costa
Partner, Penningtons Manches Cooper

"I thoroughly enjoyed reading the latest edition of the Legal Era magazine which provided nuanced insights on very contemporary and topical issues."

Rabindra Jhunjhunwala
Partner, Khaitan & Co.

At the outset, the Magazine is very inviting and captures the pulse of the Indian legal landscape extremely comprehensively, which in itself is no mean feat. Kudos on this.

Amitava Majumdar
Managing Partner, Bose & Mitra

Legal Era has propelled as a quality driven journal over the years. Not every journal would focus on bringing at your doorstep such deeply researched articles, authored by prominent people in the legal space.

Vandana Seth
Vice President Legal, 1MG

"Legal Era was the first one to bring the legal fraternity together in an attempt to recognize contributions of the forerunners in the profession. Aakriti and her team executed the award ceremony in the most professional manner and it has since become the marquee event on the calendar of commercial lawyers in India. Team Legal Era's magazine is no different. It is one of the most informative, complete and well-rounded monthly publications that reaches our desk. It offers unparalleled coverage of commercial disputes from courts across the country, and which by itself speaks volumes of the hard work put in by Aakriti and her team. I wish Team Legal Era all the best!"

Rajat Malhotra
Partner, Laware Associates

"My congratulations to the Legal Era's editorial team, which has consistently managed to bring together eminent legal practitioners from a myriad of firms, organizations and institutions to share their views on subjects of contemporary legal and regulatory importance, which help proliferate diverse and rational thought and help make an informed judgment.

What truly stands out is a quality blend of narrative in terms of both legal developments and updates in the legal market, which serves to maintain the magazine's relevance and significance both."

Ketan Mukhija
Partner, Link Legal

QUICK GLANCE

2020
SEES RECORD NUMBER OF ARBITRATION CASES
AT LCIA AND SIAC
DESPITE THE PANDEMIC

India CSR Amendments 2021
Impact on Business Sentiment

4 years of GST
A MIXED BAG?

INDEPENDENT DIRECTORS
A REALITY OR A CONCEPT?

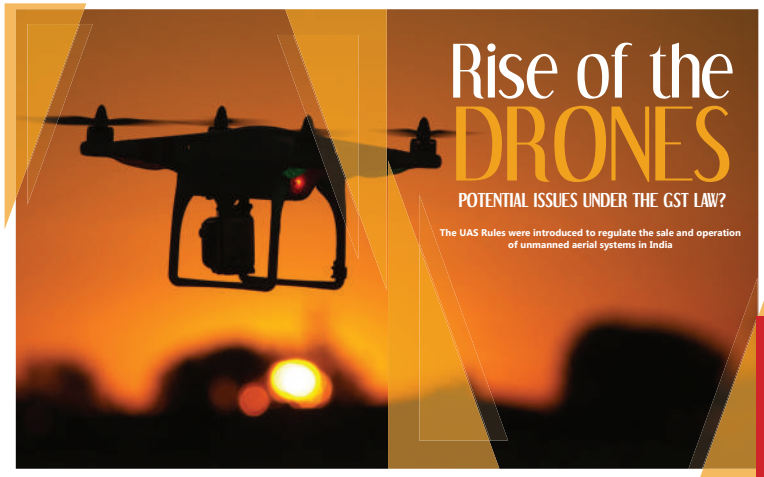
NEW STRATEGIC CHOICES:
INDIAN SUPREME COURT RULES THAT TWO INDIAN PARTIES CAN CHOOSE A
FOREIGN SEAT
OF ARBITRATION

The SC found that nothing stands in the way of party autonomy in designating a seat of arbitration outside India, even if both parties are Indian nationals

DO ANTI-EXECUTION INJUNCTIONS STEP ON THE TOES OF FOREIGN COURTS?

THE EVOLUTION OF Wealth Management IN INDIA AND THE MIDDLE EAST

Adaptation is just as important, as is the continual process of consistent revision, to ensure that what stood fast and relevant years ago, still holds fast today and shall do so in years to come…



Rise of the DRONES

POTENTIAL ISSUES UNDER THE GST LAW?

The UAS Rules were introduced to regulate the sale and operation of unmanned aerial systems in India

THE CONSUMER PROTECTION (E-COMMERCE) RULES, 2020

AN ANALYSIS OF RELATED PARTY PROVISIONS

SHAPING UP TRADEMARK LAWS A Good Sign?

CONTENTS

42 INSIGHTS

2020: SEES RECORD NUMBER OF ARBITRATION CASES AT LCIA AND SIAC DESPITE THE PANDEMIC

Nicholas Peacock
Partner

Chui Lijun
Partner

Bird & Bird

46 VIEW POINT

INDIA CSR AMENDMENTS 2021: IMPACT ON BUSINESS SENTIMENT

Dev Bajpai
Executive Director, Legal & Corporate Affairs & Company Secretary, Hindustan Unilever Limited

54 VIEW POINT

FOUR YEARS OF GST - A MIXED BAG?

Rahul Dhanuka
Partner (Indirect Taxes)

Sudipta Bhattacharjee
Partner (Indirect Taxes)

Khaitan & Co.

60 ZOOM IN

INDEPENDENT DIRECTORS: A REALITY OR A CONCEPT?

Dr. Akhil Prasad
Director, Country Counsel India and Company Secretary at Boeing

70 ZOOM IN

NEW STRATEGIC CHOICES:INDIAN SUPREME COURT RULES THAT TWO INDIAN PARTIES CAN CHOOSE A FOREIGN SEAT OF ARBITRATION

Kabir Singh
Partner

Matthew Brown
Senior Associate

Clifford Chance

76 OUTLOOK

DO ANTI-EXECUTION INJUNCTIONS STEP ON THE TOES OF FOREIGN COURTS?

Radhika Dubey
Partner

Shatrajit Banerji
Principal Associate

Himaa Sudhir
Associate

Cyril Amarchand Mangaldas

82 TAKE ON BOARD

RISE OF THE DRONES
POTENTIAL ISSUES UNDER THE GST LAW

Lakshmi Ratna Kancherla
Joint Partner

Mallows Priscilla P
Associate

Lakshmikumaran & Sridharan

88 LET'S UPLOAD

THE EVOLUTION OF WEALTH MANAGEMENT IN INDIA AND THE MIDDLE EAST

Sunita Singh-Dalal
Of Counsel

Stephenson Harwood

92 INSIGHTS

THE CONSUMER PROTECTION (E-COMMERCE) RULES, 2020: AN ANALYSIS OF RELATED PARTY PROVISIONS

Mini Raman
Partner

Angelina Talukdar
Senior Associate

LexOrbis

96 VIEW POINT

SHAPING UP TRADEMARK LAWS: A GOOD SIGN?

Indran Shanmuganathan
Partner

Michelle Loi Choi Yoke
Partner

Shearn Delamore

100

Celebrating the spirit of women at India's only awards event dedicated to appreciating women lawyers at the 3rd Annual Legal Era Women in Law Excellence Awards 2021 presented by Accenture

REGULARS

04 EDITOR'S NOTE
10 TOP STORIES
16 NATION@GLANCE
26 WORLD@GLANCE
32 WITHIN THE CIRCLE
38 LATERAL MOVES
123 FUN 'N' FROLIC

SUPREME COURT WON'T CONDONE DELAYED CONDONATION APPLICATION

Takes Odisha government to task for the inordinate delay while imposes a fine for its casual approach.

The Supreme Court of India dismissed the Special Leave Petition filed by the State of Odisha on the ground that it was filed with the delay of 1954 days.

The Division Bench of the Supreme Court of India at New Delhi, comprising of Justices Sanjay Kishan Kaul and Hrishikesh Roy dealt with this matter titled The State Of Odisha & Ors V Sunanda Mahakuda.

The bench did not go into the facts of the case and merely focused on the delay aspect. The Special Leave Petition arising out of the judgment from the Writ Appeal was filed with the delay of 1954 days. The bench noted that the Writ Appeal itself was preferred after a delay of 783 days and was found not to have been properly explained. This present Special Leave Petition was filed after the contempt proceedings were initiated on 13 May 2019 on dismissal of the said Writ Appeal.

The bench went through the Condonation Application and found that there was no reason much less sufficient and the cogent reason assigned to explain the delay and the application was preferred in a very casual manner. It was noticed by the bench that there was a number of orders of this State Government alone, which were repeated matters being filed beyond the period of limitation prescribed. It made the following remarks:

"We have been repeatedly discouraging such endeavors where the Governments seem to think that they can walk into the Supreme Court any time they feel without any reference to the period of limitation, as if the statutory Law of Limitation does not exist for them."

The bench observed that the State Government had not even taken the trouble of citing any reason or excuse nor any dates were given in respect of the period for which condonation was sought. It remarked that the object of such cases appeared to be to obtain a certificate of dismissal from the Supreme Court to put a quietus to the issue and thus, say nothing could be done because the highest court had dismissed the appeal. It made the following observation regarding such issue:

"It is mere completion of formality to give a quietus to the litigation and save the skin of the officers who may be at fault by not taking action in prescribed time. If the state government feels that they have suffered losses, then it must fix responsibility on concerned officers for their inaction but that ironically never happens. These matters are preferred on a presumption as if this Court will condone the delay in every case, if the State Government is able to say something on merits."

The Court, therefore, dismissed the Special Leave Petition as being time-barred and imposed a cost of ₹25,000 considering the period of delay and the casual manner in which the application was worded.

SUPREME COURT DISMISSES GOA MINING REVIEW PETITIONS

The Apex Court slammed the petitioners for moving the petitions after inordinate delay and retirement of judges who delivered judgment.

The Supreme Court came down heavily on the State of Goa and mining giant Vedanta for filing review petitions after the judges who delivered the judgment on the Goa mining case (Vedanta v Goa Foundation) in 2018 after the retirement of the two judges who decided the case.

The Apex Court bench of Justices D.Y.

Chandrachud and M.R. Shah lashed out at the petitioners for filing delayed review petitions.

"Rapacious mining was going on in Goa" and the private entity who was the mining leaseholder, was the beneficiary of such uncontrolled mining, the bench observed.

A bench of Justices Madan Lokur and Deepak Gupta had in February 2018 canceled mining leases renewed in favor of 88 leaseholders by the Government of Goa after finding that the licenses had been renewed in contravention of Supreme Court directions passed in 2014.

The bench referred to the Supreme Court Rules which states that review petitions must be filed within 30 days of delivery of a judgment and heard by the same judges who delivered the judgment, if they are available.

The Court noted that while the State of Goa had filed four review petitions after a delay of 651 days and after the retirement of Justice Madan Bhimarao Lokur, Vedanta filed its review petitions with a delay of 907 days and after the retirement of Justice Deepak Gupta.

"The judges comprising the two-judge bench in Goa Foundation II, Justices Madan B Lokur and Deepak Gupta, retired from this Court on 30 December 2018 and 6 May 2020, respectively. The State of Goa preferred its four review petitions in the month of November 2019, after Justice Madan B Lokur's retirement, while Vedanta Limited preferred its four review petitions in the month of August 2020, right after Justice Deepak Gupta's retirement. Such practise must be firmly disapproved to preserve the institutional sanctity of the decision making of this Court. The review petitioners were aware of the decision of this Court," the Apex Court bench said.

"In accordance with Rule 2 of Order XLVII of the Supreme Court Rules, 2013, an application for review of a judgment has to be filed within thirty days of the date of the judgment or order that is sought to be reviewed. No cogent grounds have been furnished for the delay between 20 and 26 months by the two parties in filing their applications for review," the Court further noted.

The bench, therefore, dismissed the review petitions both on grounds of limitation and merits.

SUPREME COURT UNHAPPY WITH MISUSE OF BRITISH ERA SEDITION LAW

The Apex Court wonders why this archaic law has not been repealed yet.

The Supreme Court has expressed its unhappiness over blatant misuse of the archaic sedition law by police to suppress freedom of expression.

A Supreme Court bench headed by Chief Justice of India N.V. Ramana issued notice to the government. Justices A.S. Bopanna and Hrishikesh Roy were other members of the bench.

The Court was hearing a plea filed by retired army veteran S.G. Vombatkere challenging the provision contending that it violates freedom of speech and expression and is disproportionate to the object it seeks to achieve.

"Dispute is, it is a colonial law and was used by British to suppress freedoms and used against Mahatma Gandhi and Bal Gangadhar Tilak. Is this law still needed after 75 years of Independence? Our concern is the misuse of the law and no accountability of the executive," CJI Ramana said.

Section 124A of the Indian Penal Code criminalizing sedition is a provision used by the British to quell the voice of Indian freedom fighters.

The Top Court minced no words when it observed that the sedition law has become a tool in the hands of the police to suppress dissenting voices. The Court said that the police, if it wants to fix somebody, uses Section 124A and everybody is scared when this particular section is invoked.

The Court had sought assistance of the Attorney General in the matter. Attorney General K.K. Venugopal opined that it might not be necessary to strike down the provision.

"This section need not be struck down and only guidelines be set out so that section meets its legal purpose," AG submitted to the Court.

"The government has repealed a number of laws now. I don't know why you are not looking into this," the Court said while wondering aloud as to why this British-era law has been retained.

"(If) some party doesn't want to hear the voice of other party they may use this type of law and implicate other people. It's a serious question for individuals," the Court remarked.

The bench then proceeded to issue a notice to the Central government which was accepted by Solicitor General Tushar Mehta on behalf of the Centre.

SUPREME COURT DISMISSES FACEBOOK PLEA IN DELHI RIOTS CASE

The Apex Court directs Facebook India Head to appear before a Delhi assembly panel that is probing the 2020 riots.

Tough times of the US social media giants continue in India with the Supreme Court dismissing a plea of Facebook and directing its India Head to appear before a legislative panel probing 2020 communal riots in Delhi.

A Supreme Court bench of Justices Sanjay Kishan Kaul, Dinesh Maheshwari and Hrishikesh Roy curtly told the Facebook India Head Ajit Mohan to appear before the legislative committee while dismissing his plea expressing about coercive action against him as premature.

"The capital of the country can ill-afford any repetition of the occurrence and thus, the role of Facebook in this context must be looked into by the powers that be. It is in this background that the Assembly sought to constitute a peace and harmony committee – whether it has the legislative competence or not is an aspect we will deal with it under the relevant head. The

Assembly being a local legislative and governance body, it cannot be said that their concerns were misconceived or illegitimate," the judgment stated.

The Delhi legislative assembly had constituted a Peace and Harmony Committee to probe the February 2020 communal riots in Delhi. It has asked Facebook's India Head Mohan to appear before the panel to reply to allegations that some Facebook posts created communal distress in Delhi.

Facebook refused to comply taking a plea that law and order is under the jurisdiction of the Central government in Delhi and filed a petition before the Top Court.

"Central Government and the State Government have been unable to see eye to eye on governance issues in Delhi. This has been responsible for a spate of litigation and despite repeated judicial counsel to work in tandem, this endeavor has not been successful," the Court observed and said that Delhi assembly can look into the Delhi riots even though law and order does not fall within the domain of Delhi government.

The long-drawn battle between the State and Central governments over the jurisdiction has often ended up in the courts. Delhi being a Union Territory, Delhi assembly does not enjoy the right to legislate on law and order as, besides the local Delhi Police, land in Delhi is also under the central government. The battles between the two governments ended up casting a shadow over the Committee formed by the assembly to assess peace and harmony in the city-state.

The Apex Court upheld the Delhi assembly's powers to constitute a committee to examine the Delhi Riots of 2020 while ruling that Mohan's plea was premature.

"The assembly admittedly does not have the power to legislate under the issues which fall under the domain of union government. However, objective of peace and harmony go beyond law and order and police," the Top Court said while agreeing with the submission of Delhi assembly that no coercive action has been taken against Mohan and the notice issued to him was to seek his assistance in examining a social problem.

SUPREME COURT TO HEAR WRIT PETITIONS ON CLASS XII EXAMS

A bench of Justices A.M. Khanwilkar and Dinesh Maheshwari diced that it would take up all other pending petitions together and hear concerns arising from the government's decision.

Senior Advocate Vikas Singh, appearing for a petitioner, informed the Apex Court that the government's decision to do away with examinations this year has confused students and teachers alike and need further clarification.

His main concern was the different pattern adopted by the two boards, CBSE and ICSE for evaluation based on marks allocated by the affiliated schools and the impact it would have on the students seeking admissions in colleges.

He submitted that while some schools are liberal in internal markings, some schools are more stringent. Moreover, unlike the ICSE, CBSE has permitted the respective school to do the computation of marks based on the result of a student over the past three years. This, he pointed out, could lead to manipulations by

Justices A.M. Khanwilkar and Dinesh Maheshwari

schools and leave students who may not have attended the same school during the past three years in the lurch.

He sought clarity on the option for improving the result through examination and submitted that it would be prudent to do so before the results are announced so that those students who may not be happy their marks can appear for improvement examination.

"This option may not be given as either this or either that. That will result in a huge amount of uncertainty later. Let them decide in the beginning only whether you want to take this option or you want to take the exam. Then the result can be declared. Then all the results will come at the one go and admissions to colleges will be dependent on that one result. All universities will have access to that one result at the same time. Give them the option at the outset only, rather than as a betterment chance later", Singh argued.

The bench was in agreement with Singh on this issue. "Everyone who wishes to appear in the exam should have the option to appear. But if I am satisfied with the present marks, why should I make an attempt for the improvization of marks? That the option can be exercised at the outset, there is no difficulty. That point we can put to the AG (attorney general)," observed Justice Khanwilkar.

Singh further submitted to the court that the criteria for the basis of evaluation by the ICSE and the CBSE are totally different. While the ICSE takes English as compulsory in addition to the best of the 3 subject marks, the CBSE only takes 'Best of 3'; that while one is taking the average, the other is taking the best mark.

"This kind of uncertainty should not be there. It should be uniform for both," Singh suggested. The SC bench responded to this by saying that an apple cannot be compared with oranges, CBSE and ICSE are different boards.

Advocate Abhishek Choudhury pointed out problems that the non-regular students might encounter in admissions. He submitted to the Court that the right to equality in admissions to colleges can be affected by Clause 2 of the CBSE scheme which says that for private/ patrachar (correspondence course)/2nd chance compartment candidates, etc., the examination will be conducted by the board as and when the conditions become conducive.

"In absence of Class 12th results, admissions to other colleges would be affected. CBSE, in its affidavit, has itself admitted the position that the CBSE would be able to conduct examination only in August. The competitive examinations are scheduled right from July. CLAT examination is to be held on 23rd of July. So, therefore, the results will also be declared and counseling will also start. Although these students can perform in the exam, they can't appear in counseling without the 12th result. Even if he has performed well in CLAT, he would not be able to take admission because he is not having the 12th result as per Clause 29. When the environment will be conducive for the exam cannot be said!" Choudhury contended.

"That nobody can say today. But what is the difficulty? You can sit in the exam before the result and you can pursue the option for CLAT, etc. based on that result. Counseling can be deferred till the announcement of the results. Of course, we will hear the other side on this as we don't know the implication of the same", Justice Khanwilkar said.

Advocate Singh reiterated his prayer for a physical exam. "0.17 is the positivity rate in Delhi now. The All-India average is also very drastically going down. It is a very, very important exam. Students are very apprehensive that this will throw up so much of litigation and so much of problem and uncertainty! That is because I don't know which school is doing what and how the marking will be done," Singh pleaded.

Justice Khanwilkar said there should be no uncertainty on such a crucial issue. "For the students, there should be a ray of hope somewhere. There must be no uncertainty as to whether exams are to be conducted or not. The decision has been taken at the highest level, it has also been taken on record by us. And you have the option to appear or not in the exam for improvization. There is no prejudice to anyone," Justice Khanwilkar said.

The Court asked AG K.K. Venugopal if it would be appropriate to hear other petitions challenging

the decision to cancel the exam. "We are on propriety. Should we not hear those petitions also along with this?" the bench asked.

"With all due respect, no. There should be some finality", said the AG.

"Finality would be attained by dismissal of those writ petitions. So then no grievance will remain about not hearing anyone. Since these petitions are already filed in the registry, we can't ignore them. We have, in principle, agreed with your scheme and we have permitted you to go ahead. We are now only on those points which we want modified," said the bench.

The bench will resume the hearing and also bring on board the other writ petitions filed in this regard.

TELCOS' PLEA SEEKING RECALCULATION OF AGR DUES DISMISSED BY SUPREME COURT

The Department of Telecom (DoT) had made mistakes in calculating AGR dues, telecom companies had submitted and asked the court to allow rectification of the same. On Friday, the pleas by telecom companies Bharti Airtel, Vodafone-Idea and Tata seeking correction of errors in Adjusted Gross Revenue (AGR) dues payable by them as per the apex court's October 2019 order were dismissed by the Supreme Court. A bench of Justices L Nageswara Rao, Abdul Nazeer and MR Shah passed the order on the telcos' request seeking recalibration of AGR dues after correction of mistakes.

In September last year, the apex court had granted the telcos 10 years to clear their pending AGR dues to the central government with a payment of 10 per cent each year. For the first instalment, the telcos had been given the deadline of March 31, 2021.

Bharti Airtel's total liability was ₹43,980 crore while Vodafone-Idea's was ₹58,254 crore.

Vodafone's own former estimates had pegged the dues at ₹21,533 crore, but the SC had stopped the telcos from assessing their own dues and had gone with the amounts cited by the DoT. As per the DoT, the telcos' AGR dues came to ₹58,400 crore, of which Vodafone paid Rs 7,854 crore and now has to pay ₹50,400 crore more in 10 equal instalments through March 31, 2031. Vodafone

Justices Abdul Nazeer, L Nageswara Rao, and MR Shah

however said that whatever it had already paid was not taken into consideration by the DoT while putting forth the total amount payable by Vodafone.

Tata Teleservices too said it had already deposited ₹4,197 crore as AGR dues which was not taken into consideration by the DoT

According to Bharti Airtel, its total dues are ₹13,004 crore although it has already paid more than ₹18,000 crore out of the total AGR dues of ₹44,000 crore demanded by the DoT. So Airtel too argued that AGR payments earlier were not taken into account by the DoT

DELHI HIGH COURT

DELHI HIGH COURT ORDERS INCOME TAX APPELLATE TRIBUNAL TO HEAR A CASE AFRESH

Court said non-publication of daily order-sheets and revised cause list on the Tribunal website results in inconvenience.

The Delhi High Court set aside an order passed by the Income Tax Appellate Tribunal (ITAT) on the ground that the Petitioner did not get adequate notice or fair opportunity to represent his case as neither the daily order-sheets nor the revised cause list had been uploaded on the website of the Tribunal.

A Division Bench of the High Court of Delhi, comprising Justices Navin Chawla and Manmohan, dealt with this matter titled Ankit Kapoor v The Income Tax Officer, And Anr.

The Court did not go into the merits of the case and purely dealt with the matter on the basis of daily order-sheets and the revised cause list. The Petitioner – Assessee contended that an order was passed by Respondent – the Income Tax Appellate Tribunal without mentioning the matter in the cause list because of which the Petitioner was unable to present his case, which caused him grave prejudice.

The Petitioner further contended that he was under a bonafide belief that his case would be taken up for hearing on 28 February 2020 as pronounced in the Court on the last date of hearing i.e. 14 February 2020. He was, however, informed on 28 February 2020 that his matter had already been heard on 21 February 2020 and was already dismissed on 27 February 2020. The Petitioner submitted that the order deserved to be quashed as he did not get an adequate and fair opportunity to represent his case.

The Respondent on the other hand placed on record a letter dated 15 July 2021 containing certain instructions from the Income Tax Appellate Tribunal.

The bench took the letter into consideration and found that it was apparent that the Petitioner's matter had been adjourned to 21 February 2020 on 7 February 2020. However, the Court was of the view that the Petitioner did not get adequate notice or fair opportunity to represent his case as neither the daily order-sheets nor the revised cause list had been uploaded on the website of the Tribunal.

The Court observed that the non-publication of daily order-sheets, as well as the revised cause list on the website by the Income Tax Appellate Tribunal, results in inconvenience to the litigants in general and the lawyers in particular. The Court directed the Income Tax Appellate Tribunal to upload the daily order-sheets and revised cause list on its website. It further directed that the system should be put in place by the Income Tax Appellate Tribunal in this regard, if it was not already there, within three months.

The Court, therefore, set aside the order dated 27 February 2020 passed by the Income Tax Appellate Tribunal with a direction to hear the matter afresh.

DELHI HIGH COURT DISMISSES ASTRAZENECA PLEA SAYING TWO PATENTS CANNOT BE GRANTED FOR ONE INVENTION

Two patents cannot be granted for one invention – one for genus and the other for species, the Delhi High Court has held.

Asking for two patents for one invention strikes at the very root of the appellants' claim and disentitles them from interim relief, the court said. A division bench of Justices Rajiv Sahai Endlaw and Rajiv Bansal dismissed the plea affixing ₹5,00,000/- costs.

A patentee's rights are not natural and common law rights but a creation of the law i.e. statutory rights, the judges observed.

Hence the rights must be within the four corners of the Patents Act for a patentee to enjoy protection. AstraZeneca had made nine pleas seeking an injunction against the sale of Dapagliflozin, an anti-diabetes drug by generic pharma majors Torrent, USV, Micro Labs, Zydus, and others. The relevant statutory provisions and the invention claimed in each of the two patent claims (IN 147 & IN 625) was studied by the court. Upon an inquiry of both claims, it appears completely identical without any difference between the field of invention, the court observed.

The inventor of both claims was also the same, the court said.

The court discussed the legislative intent behind the patent's limited life saying, "If patents with respect to the same invention can be granted more than once, successively in time, the same will negate the legislative intent of limiting the life of the patent and enable the patentee to prevent others from making, using or offering for sale, the new product invented by the patentee, till the time patentee successively keeps on obtaining patent therefor."

"Without DAPA being disclosed in IN 147, there could be no patent with respect to DAPA in IN 147 and which was being infringed by the respondent(s)/defendant(s) by manufacturing drugs/medicines with DAPA as ingredient," the court said.

DELHI HIGH COURT REJECTS PLEA TO STAY CCI NOTICE TO WHATSAPP

The Court urges DG, CCI to keep in mind that the appellant is under judicial consideration during the investigation against WhatsApp.

The Delhi High Court (HC) rejected a plea seeking stay on the notice issued by the Competition Commission of India (CCI) against social media giant WhatsApp LLC over the platform's new privacy policy.

A Division Bench of Justices Anup Jairam Bhambhani and Jasmeet Singh, however, urged the Director General (DG) of CCI to keep in mind that WhatsApp is under judicial consideration while conducting investigations.

The DG, CCI had issued notice to WhatsApp on 4 June 2021 in this case. "We would only urge the DG, CCI to bear in mind that investigation against the appellant (WhatsApp) is under judicial consideration before a Division Bench of this court," the bench said.

The bench also observed that there is no doubt that the issuance of impugned notice by the DG is a step in furtherance of the investigation commenced in the suo-motu case. "Ín our view, there is no doubt that the issuance of the impugned notice dated by DG is a step in furtherance of the investigation commenced in Suo-Motu case No. 1/2021 pursuant to order dated 24.03.2021, which investigation

is subject matter of the challenge in the present LPA," the HC said.

"For the foregoing reason, we do not consider it appropriate to stay the operation of impugned notice dated 04.06.2021, at this stage," says the bench said.

WhatsApp had updated its privacy policy earlier this year. It had given users time till 15 May to accept the new policy. WhatApp's contentious policy was challenged through several petitions both in the Supreme Court and the Delhi High Court.

Senior Advocate Harish Salve, appearing on behalf of WhatsApp LLC submitted that while the present LPA is pending before a Division Bench of this court, in an act that smacks of overreach, the DG has issued notice dated June 4, 2021, purporting to be under section 41(2) read with section 36(2) of Competition Act 2002, demanding from the appellant information and response to certain queries, which are 22 in number, and which are already the subject matter of the challenge in the LPA.

Advocate Salve also informed the court that related challenges are also pending before the Supreme Court.

Additional Solicitor General, Aan Lekhi, appearing for the CCI stated that he has instructions to say that though the issuance of notice dated 4 June 2021 was perfectly in line with the procedure contemplated under the statute for taking forward an ongoing investigation, which has not been stayed by the Division Bench.

Lekhi informed the court that it would take substantial time for the preparation of a report pursuant to the receipt of the information called for by way of the impugned notice; which report would thereafter be forwarded to the Competition Commission of India.

ASG Lekhi accordingly submitted that preparation of the report would not be completed at least before the next date of hearing before the Roster Division Bench i.e., 9 July 2021.

The Delhi High Court had earlier this week reserved its order on WhatsApp LLC plea challenging CCI's notice seeking certain information regarding the messaging application's privacy policy.

The CCI notice was challenged before a single-judge bench of the Delhi HC on 22 April 2021. The judge observed that it would have been "prudent" for the CCI to wait for the outcome of the petitions filed before the SC and the HC.

The counsel appearing for CCI had argued that WhatsApp's new privacy policy could lead to excessive data collection and stalking of users for targeted advertising.

The social media platforms, however, countered this by arguing that the CCI had drifted far away from the competition aspect and was instead looking into the privacy issue which was already under review by the Supreme Court.

KARNATAKA HIGH COURT

KARNATAKA BECOMES FIRST INDIAN STATE TO PROVIDE TRANSGENDER RESERVATION

Karnataka High Court informed by the state government that it has amended rules to provide one per cent reservation in government jobs to transgender persons.

State authorities have informed the Karnataka High Court that it has amended the existing rules to provide one per cent reservation in government jobs was to transgender persons.

Karnataka becomes the first Indian state to set aside government jobs for transgender persons amidst calls to do so for their integration in the mainstream of society.

The court was informed that the Karnataka Civil Services General Recruitment (Rules), 1977 have been duly amended to make provision for one per cent horizontal reservation for transgender persons in government employment.

A Division Bench of Chief Justice Abhay Shreeniwas Oka and Justice Suraj Govindaraj was informed about the amendments when a plea pertaining to the issue came up before the court.

"We have perused the amendments made by the State government to Karnataka Civil Services

General Recruitment (Rules), 1977 by the Karnataka Civil Services Recruitment Amendment (Rules), 2021 by incorporating sub rule 1 (D) in rule 9. Clause 1 D provides for one per cent horizontal reservation for transgenders," the Court recorded.

The High Court was also informed by the counsel appearing for the Central government that the National Commission for Backward Classes (NCBC) has submitted a report recommending reservation for transgender persons and accordingly, directions were issued to the State government to implement it.

APPEALS BY AMAZON, FLIPKART AGAINST DISMISSAL OF CHALLENGE TO CCI PROBE INTO SMARTPHONE SALES QUASHED BY KARNATAKA HIGH COURT

A Single Judge order dismissing the pleas filed by Amazon and Flipkart challenging a Competition Commission of India (CCI) probe into alleged competition law violations was upheld by the Karnataka Court.

The order was passed by a division bench of Justices Satish Chandra Sharma and Natraj Rangaswamy in a batch of appeals moved by Flipkart and Amazon against the Single Judge (HC) order of June 11. The Bench quashed the plea and said, "By no stretch of imagination can inquiry be quashed at this stage...Appellants should not be afraid of investigation of CCI...In the considered opinion of the Court, appeals filed by appellants are devoid of merit and deserved to be dismissed..."

June 25 was the date for reserving judgment on the matter. The CCI order in question called for a Director General (DG) investigation into allegations of anti-competitive conduct in the online sale of smartphones on the e-commerce platforms. Delhi Vyapar Mahasangh (DVM) –

which comprises traders from micro, small and medium enterprises - had accused Amazon and Flipkart of predatory pricing, deep discounting, preferential seller listing, and exclusive partnerships.

Amazon and Flipkart's petitions were earlier dismissed on June 11 by Justice PS Dinesh Kumar after which appeal petitions were filed by the e-commerce majors challenging the order. DVM, Amazon and Flipkart then made their submissions in the matter before the division bench.

The e-commerce sellers are pushing up certain sellers due to a search bias on their platforms, argued CCI counsel, Additional Solicitor General (ASG) Madhavi Divan argued that visibility for all sellers is supposed to be same and there has to be rational criteria for the same. She said that it cannot be said that Flipkart and Amazon are not part of the production chain involving supply, distribution etc. The Competition Act is meant to remove anti-competitive elements and make sure everyone is on a level playing field, Divan said.

Divan said, "If there is nothing to hide, then there is no reason to scuttle the investigation."

On its part, Amazon said that its algorithm is dictated by consumers and preferential listing based on consumer reflections.

Amazon said that the Single Judge had forgotten not to treat the online market as an instrument to promote competition.

Appearing for Flipkart, Senior Advocate Harish Salve, said, "If I give someone gives a discount on rent, how does it become an agreement in production scale?"

DVM was represented by Advocates Abir Roy and Gautamaditya Sridhara, who said that Amazon in its writ petition had mentioned that they sign agreements with smartphone makers which itself shows that they have an understanding with sellers.

KERALA HIGH COURT

KERALA HIGH COURT SAYS TECHNICAL GLITCHES NO GROUND TO DENY JUSTICE

Court rules that there is no provision under CGST for lapsing of unutilized Input Tax Credit for non-filing of TRAN-1

The Kerala High Court upheld the order of the Single Judge directing the IT Redressal Committee of the GST Council to consider Respondent's request for the transition of unavailed input tax credit in accordance with the law.

A Division Bench of the High Court of Kerala at Ernakulam, comprising Justices S.V. Bhatti and Bechu Kurian Thomas, dealt with this matter titled Union of India And Ors v M/s Merchem India Pvt Ltd.

The issue raised in this writ appeal was technical in nature. The factual background was that the Respondent – Company had sought a direction for credit of the input tax balance lying in its CENVAT Credit Ledger as of 30 June 2017 to its Electronic Credit Ledger under the GST regime. The Respondent pleaded that he had attempted to file the GST TRAN-1 Form to avail the transitional benefit of transfer of unavailed CENVAT credit to the electronic credit ledger under the GST regime but was unsuccessful as all his attempts failed. Thus, the Respondent was unable to take credit of the input tax balance lying in its CENVAT credit ledger to the electronic credit ledger.

The Respondent further submitted that he received the communication 'processed with error' whenever he attempted to submit TRAN-1 Form and thereafter, he filed a complaint with the registered helpdesk email id but did not receive any reply or solution.

The Appellant – Authorities submitted that even though the last date for filing of the form was extended from time to time, the present attempt was highly belated. The Appellant further contended that the Respondent had not made any effort to file the TRAN-1 declaration within the stipulated period.

This matter was placed before a single judge and it directed the IT Redressal Committee of the GST Council to take a call on the Respondent's request after taking into consideration the provisions u/S 140 of the Central Goods and Service Tax Act, 2017 (CGST Act). The present appeal was filed against the order of the single-judge by the Appellant.

The bench observed that it was a technical glitch that prevented the bonafide attempts to comply with the process of filing forms or returns all over the country and it was for this purpose that a Redressal Committee was formed.

The Respondent's complaint was noted by this bench which was emailed to the help desk at GST along with the screenshot of the error pointed out, requesting their assistance to complete the filing process.

The bench made the following observations with regards to the stipulated period for availing the credit:

"Under section 140 of the CGST Act, registered persons are eligible to carry forward unutilized CENVAT credit and credit of duties or taxes paid on inputs/capital goods. No time limit is specified under the said provision to carry forward unutilized credit. However, Rule 117 of CGST Rules provide for a period of 90 days from the appointed day, i.e. 01.07.2017. This period was extended till 27.12.2017 and thereafter by Rule 117(1A) the commissioners were given the power to extend the time till 31.08.2020"

The bench significantly noted that the statute does not provide for any provision for lapsing of unutilized input tax credit for non-filing of TRAN-

1 and that the input tax credit is required by law to be credited to the electronic credit ledger of an assessee.

The bench observed that the unutilized input tax credit of the erstwhile regime could only be denied from being credited to the electronic credit ledger under the contingencies mentioned in the proviso to Section 140(1) but this statutory right could not be defeated by any procedural rules under the GST regime in all other situations.

The issue of technical glitches was also observed by the bench as follows:

"It is axiomatic that computer literacy has not reached its pinnacle in our country. Technical glitches at the transition stage to GST should not affect above said statutory right of dealers. Attempt must always be made not to deprive a dealer from a bonafide claim, through technicalities. In the wake of the transition period to GST and the switching over to the electronic portal, admittedly glitches had occurred. In such instances, the department should have, while assisting the assessees, acted with alacrity and promptness rather than deny bonafide claims."

The Court upheld the order of the single judge by concluding that it was only in the interest of all that such technical issues should not stand in the way of rendering justice.

MADRAS HIGH COURT

MADRAS HIGH COURT QUASHES CENTRAL EXCISE ORDER PASSED WITHOUT OPPORTUNITY OF BEING HEARD

The Petitioner had to be provided with an opportunity of personal hearing to defend their case, Court ruled.

The Madras High Court quashed the order of the Additional Commissioner of Central Excise on the ground that the Petitioner had to be provided with an opportunity of personal hearing for the purpose of submitting the judgments, documents and the grounds raised to defend their case.

The matter titled T.M. Hotels Private Limited v The Additional Commissioner of Central Excise was placed before a single-judge Court of Justice S.M. Subramaniam in the High Court of Madras.

The Court did not go into the facts of the case and purely dealt with the Petitioner's right of being heard. The issue raised was that Respondent – Additional Commissioner of Central Excise passed an order without providing a personal hearing to the Advocate who represented the case of the Petitioner.

The Petitioner submitted that the Respondent sent a summons to the Petitioner directly and did not send one to the Petitioner's Advocate. The Petitioner submitted that they were under the bonafide impression that the Advocate will take care of the matter by appearing and defending their case. However, the Advocate could not appear before the authority as he was not aware of the summons as well as the date of personal hearing. This resulted in the passing of the final order without providing an opportunity to the Petitioner.

The Respondent contended that that summons are to be issued either to the person intended or his authorized agent as per Section 37C of the Central Excise Act, 1944. The Respondent further submitted that the summon admittedly was issued

to the Petitioner and it was the Petitioner's duty to inform the date of personal hearing to his Advocate who was appearing in the matter and therefore, the Respondent could not be faulted for the lapses committed by the Petitioner.

The judge observed that in certain circumstances, the Courts are bound to consider whether the denial of opportunity caused certain prejudice to the interest of the person aggrieved.

The bench noted the possibility that the Petitioner could not have informed about the summons to their Advocate regarding the personal hearing, which resulted in the passing of the final order without hearing the Petitioner's Advocate.

The Court opined that the Petitioner had to be provided with an opportunity of personal hearing for the purpose of submitting the judgments, documents and the grounds raised to defend their case.

Therefore, the Court quashed the order of the Respondent and remanded the matter back for fresh reconsideration.

GUJARAT HIGH COURT

GUJARAT HIGH COURT RULES THAT EVEN CHARITABLE BUSINESS REQUIRES GST REGISTRATION

The Court said that any trade or commerce whether or not for a pecuniary benefit, would be considered 'business' for GST registration.

The Gujarat High Court has held that a Medical Store run by a Charitable Trust require GST Registration since providing medicines even at a lower rate amount to supply of goods. It further held that it was immaterial whether such trade or commerce or such activity was for the pecuniary benefit or not for the purpose of 'business'.

A Division Bench of the High Court of Gujarat at Ahmedabad, comprising Justices Bela M. Trivedi and Dr Ashokkumar C. Joshi, dealt with this matter titled Nagri Eye Research Foundation v Union of India.

The factual background is that the Petitioner was a registered Charitable Trust set up with various objectives basically and essentially of undertaking eye and research activities as well as procurement and management of funds for the purpose of education and charitable activities in eye research and prevention of blindness. The Petitioner – Trust was also running a medical store where the medicines to the indoor and outdoor patients were sold at a lower rate and thus, the Petitioner preferred an application for exemption from GST registration. The Gujarat Appellate Authority for Advance Ruling, Goods and Service Tax confirmed the order of the Gujarat Authority for Advance Ruling, which held that the Petitioner – Trust was required to obtain GST Registration for the medical store run by the Trust and that the medical store providing medicines at a lower rate amounted to supply of goods.

The Petitioner submitted that both the authorities had failed to appreciate the fact that the activities carried on by the Petitioner – Trust by running a medical store could not be said to be a 'business' within the meaning of Section 2(17) of the Central Goods and Services Tax Act, 2017 (CGST Act), nor can these activities be said to be a trade or commerce nor for any pecuniary benefit. The Petitioner further submitted they could not be said to be running a medical store for profit.

The bench referred to Sections 2(17), 7(1) and 22(1) of the CGST Act in order to appreciate the concern raised by the Petitioner.

The bench held that every supplier who fell within the ambit of Section 22(1) of the Act had to get himself registered under the Act by observing the following:

"Section 22(1) of the CGST Act mandates that every supplier is liable to be registered under the Act in the State or Union Territory, other than special category States, from where he makes a taxable supply of goods or services or both, if his aggregate turnover in a financial year exceeds twenty lakh rupees, provided that where such person makes taxable supplies of goods or services or both from any of the special category States, he shall be liable to be registered if his aggregate turnover in a financial year exceeds ten lakh rupees".

The Court further noted the expression 'supply' under Section 7(1) of the Act, which includes all forms of supply of goods and services or both such as sale, transfer, barter, etc. made or agreed to be made for the consideration by a person in the course or furtherance of business. The Petitioner had not disputed that they were selling the medicines for consideration in the course of their business but only at a cheaper rate.

The Court took into consideration the definition of 'business' under Section 2(17) of the Act as well which means that any trade or commerce, manufacture, profession, vocation, adventure, wager or any other similar activity, whether or not it is for a pecuniary benefit.

The bench concluded that it was immaterial whether such trade or commerce or such activity was for a pecuniary benefit or not for the purpose of 'business' under Section 2(17) of the Act.

Therefore, the Court upheld the decision of both the authorities that the Medical Store run by the Charitable Trust would require GST registration, and that the Medical Store providing medicines even if supplied at a lower rate would amount to the supply of goods.

NATIONAL COMPANY LAW APPELLATE TRIBUNAL (NCLAT)

NCLAT SETS ASIDE LIQUIDATION ORDER FOLLOWING CoC APPROVING RESOLUTION PLAN

The Tribunal remanded the matter back to the Adjudicating Authority with a request to decide the matter as per law within three weeks.

The National Company Law Appellate Tribunal (NCLAT) has set aside an order to send the Corporate Debtor – BBN Foods Hi-Tech Processing Pvt Ltd into liquidation as the Committee of Creditors (CoC) approved the Resolution Plan.

The matter titled Dinesh Vatsayan (Suspended Director BBN Foods Hi-Tech Processing Pvt Ltd) v. Gurdev Bassi (Liquidator, BBN Foods Hi-Tech Processing Pvt Ltd) & Anr. was placed before the Division Bench of the NCLAT at New Delhi comprising of Justice Jarat Kumar Jain and Dr Ashok Kumar Mishra.

The Appellant who is the suspended Director of the Corporate Debtor – BBN Foods Hi-Tech Processing Pvt Ltd submitted that there has been a settlement between the parties since the order of liquidation.

The Resolution Plan submitted by the Appellant has been approved by the CoC by voting of 98.68 per cent. It was, therefore, prayed by the Appellant that the liquidation order be set aside and the matter be sent back to the Adjudicating Authority since CoC had approved the Resolution Plan.

The Respondent – Liquidator and the Financial Creditor who is the other Respondent – had no

objections as they were in agreement with the submissions of the Appellant.

The Division Bench after going through the submissions remanded the matter back to the Adjudicating Authority while setting aside the liquidation order dated 15 December 2020. It further directed the CoC to decide the fees of the Resolution Professional (RP) within 10 days from the day of the judgment.

The Appeal was disposed of with no costs with a request to the Adjudicating Authority to decide the matter as per law within three weeks from the day of this judgment.

10TH ANNUAL

LEGAL ERA GEN NEXT 2021

BUSINESS & LAW CONGRESS

Theme: Progressive Legal Inventions For Business Continuity, Jurisprudence, Futuristic Laws For New Tech World: Challenges Pre, During & Post Pandemic

5 WEEKS VIRTUAL CONFERENCE

1 WEEK	2 WEEK	3 WEEK	4 WEEK
19 AUG 2021 20 AUG 2021	26 AUG 2021 27 AUG 2021	03 SEPT 2021 04 SEPT 2021	10 SEPT 2021 11 SEPT 2021

HOSTED 2 DAYS PER WEEK

12
KEYNOTE ADDRESS BY EMINENT EXPERTS

36
FOCUSED SESSIONS

150+
GLOBAL EXPERT SPEAKERS

SPONSORS & PARTNERS

nim wash Vegetable & Fruit Wash

AASHIRVAAD

P&A LAW OFFICES

ANAND & ANAND

DSK Legal True Value, True Values

KHAITAN &CO Advocates since 1911

LexOrbis Intellectual Property Attorneys

TMT LAW PRACTICE

SNG & PARTNERS Advocates & Solicitors

RNS ASSOCIATES

S&R ASSOCIATES ADVOCATES

ORGANIZED & CONCEIVED BY

LEGAL ERA
www.legaleraonline.com

FOR MORE DETAILS
Email us at: shruti@legalera.in | khushbu@legalera.in
Call us at: +91 8879634922 | +91 9967255222 | +91 9082628571

United States

MORGAN LEWIS PARTNER IS THE NEW US ASSISTANT ATTORNEY GENERAL

Kenneth A. Polite

The US Senate confirms Kenneth A. Polite, Jr. for a key post in the Department of Justice. Kenneth A. Polite, Jr., a Morgan Lewis partner, will be the new US Assistant Attorney General. His appointment was confirmed by the US Senate.

Kenneth, a former US Attorney and former chief compliance officer, will be in charge of the Criminal Division at the Department of Justice. He has led a variety of complex criminal, civil, and compliance matters at Morgan Lewis.

"It is a tremendous honor for Kenneth to be selected for this leadership position at the Department of Justice. We are very proud and are confident that he will perform his new role with distinction as he continues his long record of government service and dedication to the rule of law," Morgan Lewis Chair Jami McKeon said.
According to details provided by Morgan Lewis, Kenneth will oversee criminal investigations and prosecutions throughout the United States in his new role in the Department of Justice.

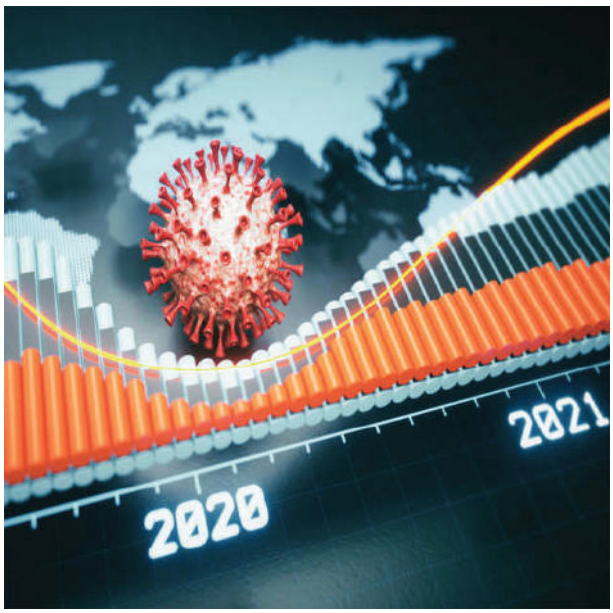
Before joining Morgan Lewis, Kenneth served as vice president and chief compliance officer for a Fortune 500 company. Earlier, he served as the US Attorney for the Eastern District of Louisiana in New Orleans and as an assistant US Attorney in the Southern District of New York. He also served as a law clerk at the US Court of Appeals for the Third Circuit.

At Morgan Lewis, Kenneth is a member of the top-tier white-collar team, which includes many who have served in government. The white-collar team include Matthew Miner, who before rejoining the firm in January 2020 served as the DOJ's Deputy Assistant Attorney General; Sandra Moser who previously served as former chief of the Department of Justice's Fraud Section; Zane Memeger who previously served as the United States Attorney for the Eastern District of Pennsylvania.

During his stint with Morgan Lewis, Kenneth served on the firm's racial justice task force, Mobilizing for Equality, including as a co-leader of the Conversation on Privilege and Anti-Racism working group.

A frequent speaker on criminal justice reform, Kenneth has received numerous accolades for his practice, civic roles, and commitment to diversity, equity, and inclusion, in addition to serving on several non-profit boards.

PANDEMIC BOOSTS CLASS ACTION CASES TO NEW HIGH



With more than one-third of US corporates facing class action claims, the defense costs rise to $2.9bn.

One of the after-effects of the COVID-19 pandemic is the huge surge in class action cases with companies in the US forced to spend $2.9 billion last year in defending related cases.

New research carried out indicates a record surge representing as much as 13 per cent of the litigation spending market.

Investopedia.com defines class action as "a legal proceeding in which one or several plaintiffs bring a lawsuit on behalf of a larger group, known as the class. The judgment or settlement agreed to arise from the suit covers all members of the group or class, where penalties paid by the defendant are divvied up among class members." The Carlton Fields Class Action Survey has revealed that the pandemic has played a leading role in driving class actions, witnessing a steady year-on-year increase, with the average annual number of cases per company being 9.3 compared to just 4.4 in 2011.

Out of the 400 American companies surveyed, more than a quarter of them faced at least one Coronavirus-related claim in 2020. About 1,600 COVID-19-related class actions cases were filed by the end of April 2021.

Class action spending has been witnessing a constant rise for the last six years. Industry estimates suggest that spending levels might hit another new record of nearly $3.3 billion in 2021. Several companies have adopted various strategies to cut down on spending with about 50 per cent of the companies surveyed looking to forge relations with outside counsel for the early triage stage of claims while 83 per cent said they had modified their business practices to temper future class action issues.

For the second successive year, internal staffing declined with the number of in-house lawyers dedicated to managing class action litigation coming down to an average of 3.6 attorneys per company.

"With the pandemic, we've seen a groundswell of new litigation, and even those companies who have not yet faced a COVID-19 class action have considered or adopted new business practices in an attempt to address related issues and minimize risk," Carlton Fields' national class actions practice group chair, Julianna Thomas McCabe, said.

The survey identified labor and consumer fraud matters as the leading categories for class actions, reporting spending figures for each category at 22 per cent and 20 per cent respectively.

Data privacy and cybersecurity matters have remained at the forefront of corporate counsel's minds for future class action threats, with 42 per cent of surveyed companies predicting an influx of cases.

The high level of concern about data privacy lawsuits stems from recently enacted or imminent state privacy statutes such as the California Consumer Privacy Act. Some respondents felt that what is being seen now could just be the tip of the iceberg.

United Kingdom

HUGE UNTAPPED OPPORTUNITY AWAITS UK LEGALTECH SECTOR

A recent LawtechUK study suggests that the UK legal technology sector could be sitting over an untapped huge market opportunity which could be worth as much as £22 billion per annum.

The study was carried out by LawtechUK.

The study titled Shaping the Future of Law revealed that serving small and medium-sized businesses (SMEs) and consumers alone could be worth £11.4 billion a year.

The study suggested that besides serving unmet demand from SMEs and consumers, it could also lead to £8.6 billion in cost savings for SMEs every year.

In addition, legal businesses in the UK could generate £1.7 billion in annual productivity gains through the use of legaltech.

"The law is critical in all our lives and businesses and it should be easy to engage with and affordable and effective for everyone. Lawtech is how we make that happen. The sector is seeing incredible growth – with lawtech start-ups and scale-ups growing at 101 per cent over the last three years and adoption levels increasing during COVID-19 across our courts, legal businesses and in-house legal teams," Jenifer Swallow, LawtechUK director at Tech Nation, said.

The report said that roughly 200 legaltech start-ups and scale-ups of the UK had attracted £674 million in investment by the last year-end, with its growth rate outpacing the fintech, climate tech and healthtech sectors.

UK legaltech businesses could attract £2.2 billion in investment every year by 2026, contributing 12,500 jobs to the economy over the same period, the study stated.

The report indicated that the fastest growth is coming from regulatory compliance-related legaltech, an area growing more than two-fold between 2018 and 2020. Legaltech aimed at the consumer and SME category grew by 74 per cent over that period, with legal document creation, management and review tech growing by 24 per cent.

"Building on this growth, working collaboratively across the sector, we can realize the full strategic opportunity of lawtech on an accelerated timeline and deliver results no one organization could achieve alone – for the benefit of regular people, businesses, the UK economy and the wider global ecosystem. The £22bn market opportunity of lawtech evidenced in this report only scratches the surface of the true impact we can have through digital transformation in law," Swallow added.

LawtechUK is a government-backed initiative within Tech Nation, a UK tech entrepreneur network. It encourages greater collaboration across the legal industry to capitalize on the growth opportunity.

IPRO ACQUIRES ZYLAB TO SPREAD ITS WINGS IN EUROPE AND UK

Acquisition enables US legal eDiscovery platform to provide better solutions to manage risk and costs to its clients.

US eDiscovery and information governance platform IPRO has acquired ZyLAB, a Netherland-based automated legal hold service provider, in its bid to expand its wings in Europe and UK.

IPRO gets full access to ZyLAB's AI-driven, real-time legal hold technology, whose fully automated notifications and custodian alerts help prevent accidental data loss or evidence spoliation.

The deal also provides IPRO users with ZyLAB's advanced analytics and cloud capabilities.

"Joining forces with the incredible team at ZyLAB enables us to provide innovative product capabilities and expand our geographic footprint in Europe and the UK. With this acquisition, we are better positioned to deliver upstream solutions to help our clients and partners manage the risks and costs associated with the continued growth of their unstructured data and legal discovery costs," IPRO CEO Dean Brown said about the acquisition.

ParkerGale Capital, a Chicago-based investment firm, which had acquired IPRO in 2017, provided the capital to fund the acquisition. DLA Piper advised ZyLAB on the deal, while Kirkland & Ellis and the Dutch law firm De Brauw advised IPRO.

Under the deal with IPRO, ZyLAB will continue to operate under its own brand name in Europe while key product development also remains in the Netherlands.

"We chose IPRO, after considering all major players on the market, because of its commitment to innovation, security and customer success," Dennis van der Veeke, ZyLAB's CEO, explained.

After NetGovern and inData, ZyLAB is the third major deal for IPRO in recent years while it continues to expand its presence and profile.

GATELEY REPORTS DATA BREACH FOLLOWING CYBERATTACK

The listed firm reports the London Stock Exchange through a filing amidst looming fines under GDPR rules.

UK-based law firm Gateley has reported that it has suffered a cyberattack through a filing to the London Stock Exchange where it is listed.

The firm has informed that only a small portion of its data, amounting to only around 0.2 per cent of its data got exposed in the cyberattack while asserting that it has been able to trace the hackers who attacked its system.

Gateley is facing a looming penalty for the cybersecurity incident since, under the GDPR rules, companies are liable to face hefty financial penalties for data breaches can be as much as €20 million or four per cent of annual global turnover, whichever is greater.

The firm said in the filing that its IT team was able to quickly identify the attack and acted immediately to secure the firm's systems.

"IT security is of paramount importance to Gateley and we had carefully planned for the

occurrence of risk that a cyber breach could have on the business. Incidents of this nature are, sadly, prevalent. I am grateful that the prompt actions of our IT team have limited the impact of this incident and enabled us to resume our business operations swiftly," Gateley's CEO Rod Waldie said.

The firm has said that while its investigation into the breach will continue, but initial findings suggest the incident was confined to 'a very small part' of its data store.

"The impacted data was traced quickly and deleted from the location to which it had been downloaded and there is no evidence currently to suggest that this data has been further disseminated," Gateley said in the stock exchange filing.

Gateley said that the data exposed included some client data and that those clients will be notified once the firm's investigations have progressed further.

According to Waldie, the firm is restoring all its systems in a safe and secure manner and as quickly as possible. He added that Gateley does not expect at this stage any significant disruption to the firm's day-to-day activities or its financial performance.

According to a Linklater research report, GDPR-related data breach incidents have witnessed a surge by two-thirds in the previous year. Estimates suggest that almost €294 million has so far been handed over in GDPR fines since 2018, the largest fine to date – €50 million – was imposed by French regulators on Google in 2019.

UK SUPREME COURT EYES FUTURE BARRISTERS BY OFFERING PAID INTERNSHIPS

UK's Top Court plans to encourage aspiring lawyers from BAME groups for greater ethnic diversity at Bar.

The UK Supreme Court wants to minimize the skewed ethnic and gender diversity at the Bar by launching paid internship for aspiring lawyers to groom future barristers.

Under the plan, eight law students will be picked up for five days of intensive training and placed in the Supreme Court during which they would closely observe the court proceedings, interact with judges and gain hands-on experience.

The paid internship program will be launched in collaboration with Bridging the Bar, a charity that works to improve equal opportunities and diversity at the Bar.

UK's Top Court is concerned with lack of representation from black, Asian and minority

ethnic (BAME) groups as at present all existing judges are white while only two of them are women. From High Court and above, their representation is confined to just four per cent in the senior judiciary.

The same trend is more or less visible at the Bar also. As of 2020, only 14.4 per cent of barristers were drawn from BAME groups and only eight per cent of silks. According to UK's 2011 census

figures, 14 per cent of the UK's population were from the BAME groups.

Those selected for the internship would be students who have either completed their vocational studies, the Bar Professional Training Course (BTPC) or have been offered a place to study the BTPC. The application process to select them is to run from June to July, with internships taking place from October to December 2021.

According to Vicky Fox, UK SC's chief executive, the launch of the scheme is part of the court's judicial diversity and inclusion strategy that would allow participants the chance to gain hands-on experience working at the court. "For five days, interns will observe cases, discuss legal arguments with justices and work closely with our judicial assistants," Fox said.

Giving details, she said that Bridging the Bar would initially run two days of preparatory coaching before the placement to ensure candidates are ready for their time at the court.

Bridging the Bar provides mentoring and work experience for groups underrepresented at the bar through disability, ethnicity, or disadvantaged backgrounds. Over 70 chambers and 400 barristers are supporting the charity, which has so far arranged more than 130 mini-pupillages and 75 mentorships.

"We sought to aim high, by going for the biggest and the best, and thought if we could get the Supreme Court, every other court would be willing to help too," the charity's founder Mass Ndow-Njie, a government lawyer, said in a media interview.

LUMINANCE'S AI OFFERING GETS WIDER ACCEPTABILITY

The London-based legaltech firm's in-house-focused contracting platform are being used by several companies now.

In-house legal teams of Vodafone, Featurespace and Ferrero are among the companies which have moved to using Luminance's new artificial intelligence (AI) platform to help their legal departments get a better grip on their contracting issues.

London-based legaltech firm Luminance Corporate uses AI technology to streamline the contract lifecycle process by automating contract drafting, version control and renewal. This enables the in-house lawyers to better understand, manage and negotiate their contracts.

The Luminance platform's AI capabilities also provide insights on those contracts helping lawyers save time and effort in manually searching for key information.

"Good technology can make a really positive difference in corporate legal departments. Being able to rapidly analyze contracts and display critical information means lawyers no longer have to waste time trawling through their contracts," Rosemary Martin, group general counsel and company secretary at Vodafone, said.

Martin further said that such tools enable lawyers to quickly and easily see which areas of a contract need to be negotiated, which can speed up the time to contract. "Faster contracting means faster revenue generation," she added.

Luminance claims that its complete suite of AI-powered legaltech tools is used by more than 300 organizations across 55 countries.

Don Riddick, chief legal officer at Featurespace, said: "Contract analysis is a fundamental process with business-critical implications, however, it has historically been time and resource-intensive."

ZOMATO LISTED ON NSE AND BSE, ₹9,375 CRORES IPO ADVISED BY CYRIL AMARCHAND MANGALDAS

Cyril Amarchand Mangaldas team advised Zomato Limited, which is a leading food services platform in India, on its initial public offering (IPO).

The Capital Markets team of Cyril Amarchand Mangaldas advised Zomato on the Transaction. The Transaction team was led by Yash Ashar, Partner & Head – Capital Markets; Bharath Reddy, Partner; Rohan Banerjee, Partner; and Gokul Rajan, Partner; with support from Sindhushri Badarinath, Principal Associate;Aashima Johur, Principal Associate; Nishkarsh Jakhar, Senior Associate; Amitpal Singh, Senior Associate; Aniran Ghoshal, Associate; and Shachi Singh, Associate.

Zomato issued 1,233,552,631 equity shares for cash at a price of ₹76 per equity share, aggregating up to ₹9,375 crores, comprising of a fresh issue of 1,184,210,526 equity shares aggregating up to ₹9,000 crores and an offer for sale of 49,342,105 equity shares aggregating up to ₹375 crores, comprising of 49,342,105 equity shares by Info Edge (India) Limited (the "Offer"). The Offer included a reservation of up to 6,500,000 equity shares aggregating to ₹49.4 crores for purchase by eligible employees of the Company.

cyril amarchand mangaldas
ahead of the curve

zomato

This is India's first unicorn to list on the stock exchanges and one of the largest digital economy companies to list in India. The deal is positioned to lead the way for other e-commerce, digital economy and technology-oriented companies to explore listing in India.

Latham & Watkins LLP was the International legal counsel to Kotak Mahindra Capital Limited, Morgan Stanley India Private Limited, Credit Suisse Securities (India) Private Limited, BofA Securities India Limited, Citigroup Global Markets India Private Limited (Book Running Lead Managers (BRLMs)

Zomato was listed on N SE and BSE on July 23, 2021.

S&R ASSOCIATES ADVISED USD 16 MILLION FUNDING FOR TREEBO HOTELS

S&R Associates advised Ruptub Solutions, the operator of Treebo Hotels, in a Series D funding round of approximately USD 16 million led by Accor, a French hospitality group, with participation from certain existing investors.

The S&R team was led by partner Rachael Israel, and included associates Raya Hazarika and Sushmita Sur
Treebo Hotels is a Bengaluru-based budget hotel chain.

It has raised ₹118 Cr ($16 Mn) in a fresh series D funding round that shall help the start up to recover from the impact of global pandemic which has affected the travel & hospitality industry immensely.

DSK LEGAL ADVISED TATA CAPITAL HEALTHCARE

DSK Legal advised Tata Capital Healthcare Fund II, acting through its investment manager Tata Capital Limited ("Tata Capital") in relation to their investment in Atulaya Healthcare Private Limited ("Company").

The Company is engaged in the business of providing diagnostic services including imaging, pathology, microbiology, specialized genetic tests, diagnostic services on public-private partnership model and operating cyclotron unit. The Company will use the proceeds from the investments to expand its business.

DSK Legal assisted Tata Capital in inter alia : (i) conducting due diligence on the Company; (ii) drafting, reviewing, negotiating, amending and finalizing the Shareholders Agreement executed between Tata Capital, Company, and its Promoters; (iii) drafting, reviewing, negotiating, amending and finalizing the Share Subscription Agreement executed between Tata Capital, Company, and its Promoters; and (iv) assisting in

execution and closing process of the transaction.

DSK Legal team for the above transaction was led by Principal Associate, Mr. Shahin Umani, Senior Associate, Ms. Pooja Khanna and Associate, Ms. Saumya Malviya.

Mr. Hemang Parekh acted as the Engagement Partner for this assignment and provided crucial inputs on the transaction.

The Company was represented by K Law.

SHARDUL AMARCHAND MANGALDAS & CO. ADVISES BHARAT PETROLEUM

Shardul Amarchand Mangaldas & Co. advised Bharat Petroleum Corporation Limited (BPCL) on its acquisition of the entire shareholding held by its joint venture partner, OQ, in BORL, constituting approximately 36.6% of the equity capital of BORL.

The deal is valued at approximately ₹2,399 crores (approx. USD 320.92 million). The deal was signed on but is closed on 30 June 2021. Post the completion of this transaction, BPCL holds 100% of the non-diluted equity share capital of BORL.

The transaction team was led by Nivedita Tiwari, Partner; Akshaya Iyer, Principal Associate; Abhinav Kumar, Senior Associate; Taruna Dhingra, Senior Associate. FEMA aspects of the transaction were led by Nivedita Tiwari, Partner and Devesh Pandey, Partner. Tax aspects of the transaction were led by Amit Singhania, Partner; Gouri Puri, Partner. Anti-trust aspects of the transaction were led by Harman Singh Sandhu, Partner; Pranav Satyam, Special Advisor; and Apurv Jain, Associate.

Clifford Chance and AZB and Partners advised OQ S.A.O.C. IndusLaw advised BORL.

LATHAM & WATKINS REPRESENTS INDIAN HOSPITALITY STARTUP OYO ON DEBT FINANCING

The capital worth $660 million was raised through Term Loan B debt offering.

The US-based international law firm Latham & Watkins represented the Indian tech hospitality startup OYO in groundbreaking debt financing. $660 million was raised through Term Loan B debt financing that would enable the company to further strengthen its core hospitality business.

The milestone transaction makes OYO the first Indian startup to raise capital using a Term Loan B instrument, as well as the first Indian startup to receive public ratings from Moody's and Fitch.

According to a Latham press release, the debt offering was significantly oversubscribed and was ultimately upsized given strong interest from institutional investors.

OYO plans to use the funds to refinance its existing facilities with long-term capital and to further strengthen its balance sheet.

Founded by young entrepreneur Ritesh Agarwal in 2013, OYO is an Indian multinational hospitality chain of leased and franchised hotels, homes and living spaces. Starting as an online booking platform for budget hotels, OYO has expanded as a global platform that empowers entrepreneurs and small businesses with hotels and homes by providing full-stack technology that increases earnings and eases operations.

The Latham & Watkins deal team was led by Singapore partners Timothy Hia and Rajiv Gupta with associates Wen Yi Tan, Helen Liu and Aakash Sardana. Additional advise was provided by Chicago partner Nabil Sabki with associate John Reinert, while advise on tax matters was provided by New York partner Jiyeon Lee-Lim and Chicago partner Enrique Rene de Vera.

L&L PARTNERS ADVISED BANK OF BARODA ON FUNDING OF GREEN FIELD VEHICLES BEING SET UP BY OLA ELECTRIC TECHNOLOGIES

L&L acted for and advised Bank of Baroda in connection with funding and financial closure of the Phase-I of the green field project for manufacturing electric 2 (two) wheeler vehicles being setup by Ola Electric Technologies Private Limited at Tamil Nadu. The first phase will have a manufacturing capacity of 0.50 million vehicles per annum, valued at over US$ 100 million.

L&L team was led by Partner - Girish Rawat, Senior Associate - Varun Chauhan and Associate - Arjun Varma.

The government has brought in several policies to incentivize Make-in-India and to enable India to become a global EV leader. In this context, this is landmark deal in the Electric Vehicle space. It shows the confidence of institutions in funding projects for accelerating the transition to sustainable mobility.

Ola Futurefactory is coming up on a 500-acre site in Tamil Nadu and at full capacity of 10 million vehicles annually, it will be the world's largest two-wheeler factory. The first phase of Ola's Futurefactory is nearing completion and will be exporting the EVs to international markets like France, Italy and Germany etc. This will put India on the global map in EV space.

JSA REPRESENTS TATA POWER IN ACQUISITION OF ODISHA POWER SUPPLY FIRMS

jsa
advocates & solicitors
TATA
TATA POWER

Tata Power Company Limited seeks CCI's approval to acquire a majority stake in three power supply companies of Odisha. Leading Indian law firm J. Sagar Associates (JSA) has advised and represented the Tata Power Company Limited (TPCL) in the latter's bid to acquire majority stakes in three power supply companies of the eastern state Odisha.

JSA represented TPCL before the Competition Commission of India (CCI) through three separate filings, seeking the regulator's approval for its acquisition of 51 per cent equity share capital of the three Odisha firms – Western Electricity Supply Company of Orissa Limited (WESCO), Southern Electricity Supply Utility of Odisha Limited (SOUTHCO) and Central Electricity Supply Utility of Orissa Limited (CESU).

TPCL, a public listed company, is a part of the Tata Group and is primarily engaged in the business of power generation, transmission and distribution across India. WESCO, SOUTHCO and CESU are three of the four power distribution companies in the State of Odisha.

The acquisitions were made pursuant to a bidding process initiated by the Odisha Electricity Regulatory Commission under Sections 20 and 21 of the Electricity Act, 2003 (Electricity Act). This is the first transaction under Section 21 of the Electricity Act that the CCI has considered and approved.

JSA team comprised Lead Partner Farhad Sorabjee, Partner Vaibhav Choukse, Principal Associate Ela Bali and Associate Aditi Khanna. Lead Partner Anupam Varma and Partner Rahul Kinra advised on the Electricity law aspects.

DSK LEGAL & SIMMONS ADVISED IDP ON ACQUISITION OF BRITISH COUNCIL IELTS INDIA

International law firm Simmons & Simmons and Indian law firm DSK Legal have jointly advised IDP Education Ltd., an Australian listed entity, on the acquisition of the British Council's International English Language Testing System (IELTS) business in India for £130m.

The terms of the agreement negotiated provide that IDP will purchase 100% of the British Council's India IELTS business on a debt free, cash free basis. Existing British Council employees will join the IDP team when the deal completes in August.

The Simmons team was led by corporate partner Arthur Stewart and counsel and head of the India group for UK corporate, Shashwat Patel with assistance from corporate supervising associate, Callum Bailey. Disputes partner Patrick Boylan and IP partner Adrian Smith also provided significant input. The DSK team was led by corporate M&A partners Aparajit Bhattacharya and Harvinder Singh.

The International English Language Testing System, or IELTS, is the world's most popular English language test for study and migration and is trusted by more than 10,000 organizations around the world as a secure and reliable indicator of English language proficiency. IDP is a leading international education service facilitating international students' study in English speaking countries. The new deal will mean that there will be no service interruption during the British Council's transfer of operations to IDP and students will still study under the long established IELTS program.

From DSK Legal, India, commenting on the deal Aparajit said, "It was a pleasure for us here at DSK Legal, India to act for IDP Education on this landmark transaction. Spread across

Arthur Stewart & Aparajit Bhattacharya

three jurisdictions (India, UK and Australia), the entire team came out strong working together through the pandemic to create a win-win for all stakeholders. Congratulations to IDP Education and British Council, and all the advisors who worked on the transaction. Great multi-jurisdictional team effort. The sector has a lot to offer and we look forward to working closely with the IDP team in growing the business further here in India." Harvinder said: "We are absolutely delighted to have assisted IDP, in partnership with Simmons. Our continuous collaboration with Simmons allowed us to deliver better for IDP and this will strengthen our reputation as a go to firm for the largest and most complex M&A transactions."

Commenting on the deal, Arthur said: "It was a pleasure to act for our client IDP on this strategically important transaction in India. We look forward to the future success of the business." Shashwat said: "The deal is significant from an India perspective given its size and scale and reflects the continued interest that India is generating around the world. The sector is also particularly exciting."

REPUBLIC OF THE PHILIPPINES ADVISED BY LINKLATERS ON ITS LARGEST BOND OFFERING

The Republic of the Philippines (ROP) was successfully advised by Linklaters on its largest bond offering comprising US$750m 1.95% global bonds due 2032 and US$2.25bn 3.2% global bonds due 2046. The largest 25-year note the ROP has issued is part of this offering. Earlier in 2021, the ROP was also advised by Linklaters on its issuance of €650m 0.25% global bonds due 2025, €650m 1.2% global bonds due 2033 and €800m 1.75% global bonds due 2041.

Capital Markets Partner Amit Singh led the Linklaters team supported by counsel Christian Felton and Xunming Lim, and US senior associate Jairo Carvalho Lamatina.

Linklaters has been the ROP's international counsel on all six of its liability management transactions since 2012 and 11 out of 13 of its past SEC-registered bond offerings. Amit Singh, who is Head of the South and Southeast Capital Markets, said, "We are honored to have been a long-term partner of the Republic of the Philippines and truly grateful for the confidence the government had placed in us over the past nine years. Our team looks forwarding to continuing to support the Republic of the Philippines in its future transactions."

In advising on sovereign bond issuances in the region, Linklaters has long-standing experience. Earlier in 2021, the Government of Malaysia too was advised by the firm on the issuance of its US$1.3bn dual tranche sukuk offering, the first sovereign sustainability sukuk in the world, and establishment of the US$1bn trust certificate issuance program of Maldives Sukuk Issuance Limited plus the subsequent US$200m 5-year sukuk issuance, with which the Maldives debuted sovereign sukuk in the Islamic finance market.

LINKLATERS GETS NEW GLOBAL FINANCE HEAD

Paul Lewis replaces Gideon Moore as new firmwide managing partner as the firm embarks on a new leadership direction.

Linklaters has got a new global finance head in Paul Lewis as its new firmwide managing partner.
Lewis, a capital markets partner took over on 16 July from Gideon Moore who opted to step down early. Moore's term was originally due to end next year. He was in the role for just over five years and will continue to serve with Linklaters as a partner.

Lewis' promotion is a part of the firm's ambitious drive to go for new leadership to continue its international growth.

Lewis has been associated with Linklaters since 1997 and was promoted as a partner in 2006.

Previously, he headed the firm's finance division. Lewis was also co-head of its innovation group besides being on the firm's partnership board and its executive committee. Lewis is a capital markets lawyer specializing in derivatives and structured securities.

"Paul will be an excellent firmwide managing partner. We have enjoyed working together as colleagues and friends for over 20 years. I have great confidence in his strategic thinking, strong leadership skills and laser-sharp focus on our future success. I'm looking forward to us leading the firm together to foster ambition, creativity and excellence from our high-performing teams across the world," Aedamar Comiskey, Linklaters new senior partner and chair, said. Notably, Comiskey had taken over as the firm's first female senior partner in May this year in Linklaters almost 200-year history. Simon Branigan had replaced Comiskey last month as the firm's new global corporate head.

Lewis said: "Having been with the firm for 24 years since joining as a trainee, it is a privilege to have been chosen to work with Aedamar in leading us in the next part of our story. The firm has a simple formula – exceptionally talented, high-performing teams delivering outstanding results for clients. I look forward to Aedamar and myself helping foster the environment that enables that to happen and have a huge excitement as to what the future holds for Linklaters."

HUL AMIT BHASIN JOINS MARICO GROUP

Amit Bhasin joins Marico as Executive Vice President and Legal Head Marico Limited.

Amit Bhasin joined Marico Limited on 23rd June, 2021 as Executive Vice President and Legal Head. He is part of the Executive Committee of Marico Limited and is responsible for Legal and Corporate Affairs Function for Marico Group.

Prior to joining Marico, Amit Bhasin was associated with Hindustan Unilever Limited as General Manager – Legal and Corporate Secretarial. He has over 18 years of experience in Corporate Legal, Legal Business Partnering, Corporate Compliances and Governance. He has worked across organizations in consumer sector. He has worked on several M&A transactions for

Unilever, recently being acquisition of GSK business. He was part of several global working networks for Unilever including Global Competition Law Network

for Unilever and drives competition awareness and compliance across South Asia for Unilever.

Speaking with Legal Era, Amit said "Marico is a great organization with distinct culture and driven by its core values. I am inspired with the purpose of Company 'to transform in a sustainable manner, the lives of those we touch, by nurturing and empowering them to maximize their true potential. I am delighted to have this opportunity to be part of Executive Committee of Marico to lead Legal and Corporate Affairs function. I am looking forward to contribute to Marico's journey towards 'Making a Difference'."

A Chartered Secretary and Law Graduate by education, Amit earned his qualification from the Institute of Company Secretaries of India (ICSI) in the year 2001. He has also completed Postgraduate Certificate in Sustainable Business (PCSB) from University of Cambridge in 2010.

KHAITAN & CO GETS NEW PARTNER FROM L&L PARTNERS

Lodha joins IP practice group at Khaitan & Co.

The expected movement of lawyers following the acrimonious exit of Mohit Saraf from Luthra & Luthra Partners has started to gather momentum with partner Nirupam Lodha quitting the firm.

Lodha has joined Khaitan & Co as a partner in the IP practice group at the firm's New Delhi office. Lodha, one of the pillars of L&L Partners was associated with the firm for 14 years before he decided to call it quits.

Lodha, a graduate of the National Law University, Jodhpur, brings with him solid experience in IP and information technology law. During his time with L&L Partners, Lodha worked extensively on IP transactional matters, led IP enforcement actions and handled large

IP portfolios for domestic and international clients. He advises clients on matters relating to information technology and data privacy besides data security breaches including risk mitigation steps.

KIRKLAND & ELLIS HIRES RACHAEL COFFEY AS PARTNER

Kirkland & Ellis LLP has roped in Rachael Coffey as Partner in the New York Corporate Practice Group.

Job A. Ballis, Chairman of Kirkland's Executive Committee, said, "Rachael is a rising star in M&A, and her talents will be an asset to our top-tier strategic M&A and private equity platform. Her broad range of transactional experience will be invaluable to our clients across the Firm."

Rachael's practice will focus on guiding companies, activist defense, private equity sponsors on M&A transactions and other important corporate matters. She will represent special committees and the Board of Directors in disputed situations. Eric Schiele, Corporate Partner and member of Kirkland & Ellis' Executive Committee, said, "Rachael is an outstanding lawyer – a pragmatic, creative, business-oriented professional that gets deals done for her clients. She's

one of the leading young M&A attorneys, and we are excited for her to join our team in New York."

Law 360 named Rachael a "Rising Star" and The Deal named her among the "Top Women in Deal making" in 2021. She was also recognized as a "Rising Star" among M&A lawyers by The Deal in 2020. Her work in Corporate/M&A was recognized by The Legal 500 U.S.

Rachael said, "What Kirkland has built in the public M&A space is very impressive. I look forward to joining Kirkland's tremendously talented M&A team, which is known for its energy and creativity in leading high-profile and complex transactions." Previously Partner at Paul, Weiss, Rifkind, Wharton & Garrison LLP in New York, Rachael holds degrees from Georgetown University Law Center and Princeton University.

The M&A Practice Group at Kirkland remains at the forefront of important, cutting-edge transactions across all major industries. The practice was named "US Cross-Border M&A Legal Advisory Firm of the Year" at the North America Mergermarket awards 2021 among other awards and accolades. The New York team has around 30 partners focused mainly on public company M&A, including hires in the last five years such as Jonathan Davis, David Klein, Edward Lee, Eric Schiele, and Rachael.

Kirkland is the consistent market leader in terms of numbers and deal value. Mergermarket ranked Kirkland #1 and #2 for both global and U.S. in the first half of 2021. The firm's US M&A Attorneys have represented public companies in deals totalling around $685 billion over the past three years.

HSA BHARAT SHARMA IS BACK WITH NAIK NAIK & CO

He will join the corporate practice of the firm.

Having worked with HSA Advocates as Partner for the past 5 years, Bharat Sharma is back to Naik Naik & Co. where he worked prior to HSA Advocates. Bharat has returned to the Naik Naik fold as Partner to buttress the firm's corporate practice.

Bharat has previously also worked with Khaitan & Co, PDS Associates, Talwar Thakore & Associates, and ARA Law.

An expert in the field of Corporate M&A, Bharat has more than 15 years' experience and his core expertise lies in the areas of inbound and out-bound mergers & acquisitions, private equity, venture capital, joint ventures and commercial contracts.

Welcoming Bharat, Founding & Managing Partner Ameet Naik, said, "The repertoire of work done by Bharat during his professional journey is holistic and

illustrious. He has been at the forefront of various joint-ventures, acquisitions, divestments, business transfers, financial and strategic investments & exits and corporate and business restructurings. With his on boarding, our significant amount of transactional and contractual mandates in the Real Estate, TMT, e-commerce, Start-ups, Fintech and tech-based media practice will further grow."

MIDDLE EAST | LAW AWARDS

2nd Annual

LEGAL ERA

Middle East Law Awards
2020-21

OPEN FOR ENTRIES

NOMINATIONS OPEN IN FOLLOWING CATEGORIES

- INDIVIDUAL
- LAW FIRM
- LEGAL TEAM

For More Details mail us at: Jessica@legalera.in | awards@legalera.in

Visit us at: www.middleeast.legaleraawards.com

LEGAL ERA
www.legaleraonline.com

2020 SEES RECORD NUMBER OF ARBITRATION CASES AT LCIA AND SIAC DESPITE THE PANDEMIC

Arbitration institutions such as the LCIA and SIAC, as well as domestic Indian institutions such as the Mumbai Centre for International Arbitration (MCIA) have continued to administer and resolve disputes throughout the pandemic...

The lockdowns and switch to virtual working brought about by the COVID-19 pandemic have inevitably caused disruptions to the traditional forms of dispute resolution. 'In person' filings and hearings have been difficult or impossible in many jurisdictions. Some courts have been able to switch to e-filing and online hearings with minimal disruptions, while others have struggled. The arbitration world has similarly seen a switch from in person to virtual, or 'hybrid', hearings, and an increased focus on e-filing and electronic hearing bundles over the use of paper. To some extent, this has built on the use of email, online document transfer, telephone and video conferencing which have been deployed in arbitration for many years, although there is no doubt that 2020 has seen a step change in the ability of arbitration institutions, counsel, and tribunals to operate entirely online.

However, this change has not caused any reduction in the popularity of international arbitration, nor seemingly in the ability of stakeholders to continue to bring claims, hold hearings, and receive their awards. On the contrary, many arbitral institutions are reporting record numbers for 2020.

This article looks at two such institutions of particular relevance to Indian parties: the London Court of International Arbitration ("LCIA") and the Singapore International Arbitration Centre ("SIAC").

LCIA

Record Case Numbers

2020 saw the LCIA achieve all-time highs with 444 referrals and 407 arbitrations under the LCIA rules. These strong figures have helped the LCIA achieve a doubling of arbitrations over the past decade.

The arbitrations came mostly from the top three industry sectors of the LCIA's caseload: energy & resources, transport & commodities and banking & finance. Between them, these three sectors accounted for 68% of all LCIA arbitrations in 2020.

International Status

Underlining its status as a global arbitral institution, 86.6% of the parties to LCIA arbitrations in 2020 came from outside the UK (an increase of over 5% from 2019). Further, 16% of LCIA arbitrations in 2020 took place at locations ('seats') outside the UK. While English law was chosen to govern the dispute in 78% of arbitrations, LCIA arbitrations also applied the laws of 33 other jurisdictions. Interestingly, the LCIA reports that for arbitrations held in Germany, Pakistan and Mexico, more parties chose to match the applicable law with the seat.

Arbitrator Appointments

2020 saw the LCIA make a total of 553 arbitrator appointments comprising 42% of all arbitrator

Nicholas Peacock
Partner

Chui Lijun
Partner

Bird & Bird

selections (i.e. the remainder being chosen by the parties or the other arbitrators). Of these appointments by the LCIA, 45% were female reflecting the LCIA's continued commitment to gender diversity.

As in previous years, there were very few challenges to LCIA arbitrator appointments. 2020 saw only six challenges of which just one was upheld.

SIAC

More Records Broken

SIAC also had a record-breaking year reporting over 1,000 new case filings. Astonishingly, this is more than double the filings in 2019. The dominant sector for SIAC's cases was trade which alone made up 64% of cases. This reflects both the high use of SIAC arbitration for trading contracts, especially within Asia, and the turbulence of markets in recent years.

International Popularity Continues

94% of SIAC cases were reported as being of an international nature. Of its many non-Singaporean users, Indian parties continue to dominate being involved in 690 cases (an increase of over 40% from 2019), followed by US parties at 545 cases. Having long had a representative office in Mumbai, it is no surprise that SIAC chose 2020 to open a representative office in New York.

The remaining top ten foreign users were China, Switzerland, Thailand, Indonesia, Hong Kong, Vietnam, Japan and the Cayman Islands. In total, SIAC received cases from 60 different jurisdictions.

Singaporean law was chosen in 76% of SIAC cases in 2020, having risen from 41% in 2019.

Arbitrator Appointments

SIAC made a total of 143 arbitrator appointments, accounting for almost half or all arbitrator appointments in 2020. Of these, just over 32% were female.

As with the LCIA, there were few challenges to

SIAC arbitrator appointments. Just four in 2020, of which only one was upheld.

CONCLUSION

Arbitration institutions such as the LCIA and SIAC, as well as domestic Indian institutions such as the Mumbai Centre for International Arbitration (MCIA), are to be commended for their flexibility in continuing to administer and resolve disputes throughout the pandemic.

While many courts in India remain challenged by the ongoing disruptions, it seems likely that the numbers of parties choosing arbitration will continue to grow.

ABOUT THE AUTHOR

Author: Nicholas Peacock
Designation: *Partner*

Nicholas is a partner and head of the international arbitration practice at Bird & Bird in London. He has appeared before arbitral tribunals in Europe and Asia, as well as in the London High Court, and has acted for and against State governments. He has also sat as an arbitrator on India-related disputes in London and Singapore under various institutional rules and ad hoc. Nick is a supervisory Council member of the Mumbai Centre for International Arbitration (MCIA), and a Users' Council member for the Singapore International Arbitration Centre (SIAC) and the London Court of International Arbitration (LCIA).

Author: Chui Lijun
Designation: *Partner*

Chui Lijun is a partner in the Singapore dispute resolution practice of Bird & Bird. She specializes in international arbitration and has acted as counsel in international and domestic arbitrations (both ad hoc and under the SIAC, ICC, LCIA, LMAA and UNCITRAL rules). In addition to her work as counsel, Lijun is also an arbitrator (she is a Fellow of the Chartered Institute of Arbitrators and on the SIAC Reserve Panel) and an accredited mediator.

Author: Laura Goold
Designation: *Trainee*

Laura Goold is a trainee solicitor in the dispute resolution practice of Bird & Bird in London.

India CSR Amendments 2021

Impact on Business Sentiment

Do the new CSR amendments foster transparency and accountability, or are they unfeasibly prescriptive? Experts offer insight into the divided business sentiment across industry sectors, weeks since its introduction.

DEV BAJPAI

Executive Director, Legal & Corporate Affairs and Company Secretary, Hindustan Unilever Limited

On 22nd January 2021,

the Ministry of Corporate Affairs notified the Companies (Corporate Social Responsibility Policy) Amendment Rules, 2021.[1] These amendments have further structured and expanded on the 2014 rules.

3 *key shifts have ruffled feathers across India Inc.*

One, the amendments have altered fundamental facets of the CSR policy. They limit the discretionary authority that companies previously exercised concerning their internal control and responsibilities in their CSR activities.[2]

Two, the MCA has broadened CSR's definition to include research and development for vaccines, medicines, medical devices, and overseas training of Indian sports personnel representing state or union territories at a national or international level.

And three, the overhaul also excludes contributions to political parties, activities benefiting company employees, and sponsorship-based activities that derive any market benefits for products or services.[3]

Here's a snapshot of a couple of other amendments.[4]

- Non-compliance with the CSR rules and regulations has been reduced from a criminal offense to a penalty obligation.
- Impact assessments by independent agencies for companies with CSR obligations of ₹10 crores and above or projects with outlays of ₹1 crores and above are mandatory.
- Every company board is required to disclose the composition of the CSR committee, policy, and projects on their company's website. They must also provide the CSR policy's approach and direction and formulation of the action plan.
- All companies must transfer unspent allocated funds to an Unspent CSR Account. Any excess CSR expenditure can also be carried forward to the following three years.
- Companies are permitted to engage 'international' organizations to design, monitor, and evaluate their CSR activities.
- CSR funds can be used to acquire capital assets; however, a company cannot directly own these assets.
- 'Administrative Overheads' now only include expenses incurred for "general management & administration" of CSR functions.
- On-going projects can be a program for a maximum of 4 years, including the year of commencement.

The argument in favor of actionable governance comes from diverse quarters.

The National CSR Summit 2021 hosted by Brand India in New Delhi, spurred numerous significant discussions regarding this shift from directional to mandatory CSR policies. This will affect how companies implement their CSR activities, assess their impact, and focus on quality and value creation within CSR.

The event was attended by eminent dignitaries. Dr. K.K. Upadhyay, Chairman of the DNR Foundation, Mr. Atul Singh, Vice President - CSR, Emami Group, and Dr. Lopamudra Priyadarshini, General Manager - Sustainability & Community Relations, Aditya Birla Group[5].

1 *Samheeta Rao (2021), New amendments to the CSR Act: All you need to know, IDR Online, https://idronline.org/new-csr-act-amendments-updates-and-all-you-need-to-know/ [accessed on 10th April 2021]*
2 *Rahul Rishi & Dr. Milind Antani, India-Amendments to CSR Rules: A Game Changer https://www.natlawreview.com/article/india-amendments-to-csr-rules-game-changer [accessed on 10th April 2021]*
3 *Noshir H. Dadrawala (2021), Analysis of Companies (Corporate Social Responsibility Policy) Amendment Rules, 2021, Center of Advancement of Philanthropy (CAP) India https://capindia.in/analysis-of-companies-corporate-social-responsibility-policy-amendment-rules-2021/ [accessed on 10th April]*
4 *India CSR Network (2021), Key Features of Amended CSR Rules, 2021, India CSR https://indiacsr.in/key-features-of-amended-csr-rules 2021/#:~:text=In%20the%20event%20of%20the,to%20a%20government%20notified%20fund [accessed on 10th April 2021]*
5 *India Education Diary Bureau (2021), National CSR Summit Concluded Successfully With Powerful Discussions, India Education Diary https://indiaeducationdiary.in/national-csr-summit-concluded-successfully-with-powerful-discussions/ [accessed on 10th April 2021]*

The general consensus of sentiment was one of cautious optimism towards these new amendments that many hoped will positively influence CSR impact and hold the right people accountable for their contributions.

Ms. Ranjitha Lakshmanan, District Advocate, and Director YALI Foundation welcomed the new amendments as a historic decision.

Mr. Tamil Maran, District Executive Officer, TNRTP, stated that these changes will encourage both corporate and NGO CSR undertakings to adhere to professional standards of implementation and execution.

Mr. Aditya Shankar, Supreme Court Advocate, who referred to CSR as an important discretion in the Indian Constitution, opined that these amendments will foster transparency, flexibility and create opportunities for more impactful projects to be implemented.[6]

HEMANT KUMAR

Group General Counsel, Larsen and Toubro Ltd.

Mr. Hemant Kumar, the Group General Counsel for Larsen and Toubro Ltd. spoke with Legal Era that he believes the slew of amendments have, for the most part, brought in clarity concerning several ambiguous aspects about CSR. These amendments are expected to introduce a greater measure of accountability towards the deployment of CSR Contribution and to ensure that we move towards an outcome and impact-oriented CSR regime. Hence, he asserts that the amendments are indeed a positive move.

Hemant makes a special note of the amendments whereby companies are now permitted to conceptualize and engage in CSR activities that have an outlook of up to 48 months. Companies can also now adjust any amounts spent more than the CSR Contribution against future CSR activities – up to 3 immediately succeeding financial years. He believes, "That could prove to be beneficial, especially in the current times where companies have spent more than the mandated CSR contribution during the pandemic. The true success of mandating CSR lies in achieving outcomes that have a demonstrable impact on society. That being the case, the onus on the Board and the CSR committee is now greater – they are effectively tasked with ensuring that the CSR Contribution reaches the intended beneficiaries and has the desired impact on society."

BADRINATH DURVASALA

Managing Director, Essar Capital

Mr. Badrinath Durvasala, Managing Director Legal at Essar Group in Mumbai shared with Legal Era his enthusiasm about the societal impact of the annual action plan initiated under the new CSR provisions. He finds this path-breaking and leap frogging to tackle the current pandemic of unprecedented magnitude engulfing India & the world. To quote him, "The legislation is thought-provoking, prospective, an enabler in the facet of public good, objective setting besides being laced with accountability in the hands of corporates. It is a wish and hope of the citizenry at large, engraved in the form of legislation, creating an avenue of rescue and rejuvenation in the hands of India Inc.!"

He went on to add that there are twin advantages the way the amendments are brought in. The key imperative is in engaging international organizations from the stage of designing to a state of finality in evaluation of the CSR programs. These enablers facilitate a global perspective on how to align with the global best practices to serve the society at large and beyond Indian terrain and earn international recognition. The other big push is to carry forward the excess CSR expenditure to

6 *Sl No. 5 (f) of Schedule II of the CGST Act states that transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration shall be treated as supply of services.*

ANUBHAV KAPOOR

Director of Legal Affairs, Ford India Private Limited

the next three years, which allows the corporates to take up sustaining initiatives, without limiting to budgetary constraints as the excess spend for an year can be set off for future years. These twin paradigm shifts, he feels propels the real CSR mind-set, from a compliance mode to committed public good mode, which delivers a huge advantage to Indian corporates.

Anubhav Kapoor, the Director of Legal Affairs for Ford India Private Limited, finds the mandate for CSR Impact Assessment a significant new aspect and hopes that such a requirement will result in a more meaningful assessment of the project and measure contributions by companies towards the society. He asserts his view to Legal Era that, "Impact assessment will also prove as an important tool for the board members to better plan CSR project and focus on project design when they are being conceived and approved by them."

Vineet Vij, the Group General Counsel for Tech Mahindra is upbeat that the amendments will create an impetus for the Corporates to utilize CSR funds towards facilitating social change. He shared his views with Legal Era that bringing the overall CSR Policy of a company under the supervision of the Board coupled with stringent monitoring of CSR implementation and accountability would only strengthen the larger objective of serving the society with greater thoughtfulness and dedication.

Making a special note of the amendment decriminalizing non-compliance of CSR rules and regulations and criminal offense being reduced to a civil wrong only with financial penalty obligation, he is reassured: "That provides much need respite from continual undue influence that in hindsight dreaded corporates by penalizing them despite the contributions done to the society, he said."

Vineet Vij also shares a couple of contextual observations and experiences in the current pandemic times. "Tech Mahindra has always followed the core philosophy of commitment, upliftment, and contribution to the society and the recent amendments to include research and development of medicines, vaccines, medical devices are indeed a very welcome step.

Taking due cognizance of the sudden acute crunch of oxygen devices and plants in the country, MCA recently notified and elaborated that creating health infrastructure for COVID care, the establishment of medical oxygen generation and storage plants, manufacturing and supply of oxygen concentrators, ventilators, cylinders and other medical equipment for countering COVID-19 would qualify as eligible Covid-related CSR expenditure. Tech Mahindra

VINEET VIJ

Group General Counsel, Tech Mahindra

through its CSR arm Tech Mahindra Foundation quickly started work on this front and as part of our CSR vision, we have been on the forefront in partnering with NGOs to enable hospitals to become self-sufficient by setting-up up oxygen plants besides deployment of oxygen concentrators and oxygen cylinders to help resolve the oxygen crisis in India."

Vineet Vij reinforces, "Of course, the amendments regulate the way how the CSR activity should be undertaken by the corporates but with the sole objective to bring more transparency, clarity, and uniformity in the entire process. We are hopeful that the government with cohesion and consultation will address the apprehensions of India Inc. owing to these amendments and, with the due passage of time and with more and more corporates committing themselves fully to contribute in their CSR roles, we firmly believe that India's CSR regime will be playing a very significant role in nation-building."

Some have reservations regarding ambiguous instruction and prescriptive benevolence.

As per the CSR amendments, upcoming CSR expenditures that exceed the allocated amount can now be carried forward to the following three years. However, experts note a lack of clarity in rules regarding excess expense before the amendment and how that expense could be factored into the overall CSR policy.

Harish Kumar, a partner at L&L Partners, suggests that "The government may consider allowing corporates which have in good faith incurred excess CSR expenditure in the past to set it off against future CSR expenditure requirements."

Kumar also emphasized that the changes would require private trusts to embark upon the process of becoming registered as public trusts or discontinue serving as implementing agencies for CSR. This was a considerable overhaul "given that a sizable amount of CSR is being contributed through their private trusts by many companies, including blue-chip companies." These changes could impact private trusts like Reliance Foundation, Bharti Foundation, and DLF Foundation, among others that manage CSR disbursements for affiliates and subsidiaries.[7]

Bharat Vasani and Varun Kanan from Cyril Amarchand Mangaldas maintain that the CSR mandate under section 135 was founded on the 'comply, or explain' principle, which was intended as a voluntary undertaking towards the greater good. They assert that the prevalent corporate sentiment in response to the new rules suggests that they have become "rather too prescriptive", leaving companies little room for flexibility in their efforts to implement meaningful CSR programs.[8]

Business tycoon, philanthropist, and IT czar Azim Premji also stated that he didn't believe "we should have a legal mandate for companies to do CSR." According to him, philanthropy "must come from within and cannot be mandated", and there is a real need to distinguish philanthropy in an individual capacity from a company's CSR

BHARAT VASANI
Partner
Cyril Amarchand Mangaldas

initiatives.[9] Premji, who transformed Wipro from a modest vegetable oil-making company into a mammoth conglomerate and industry leader in IT services, is renowned for his generous contributions to humanitarian causes. Turning in Rs 7,904 crore in donations in 2020 alone, he shares how his views on altruism were influenced by "Mahatma Gandhi's idea of trusteeship of wealth", where "the wealthy must act as custodians of wealth for the benefit of society, and not as owners of wealth."

In sync with Azim Premji's view, Dev Bajpai, the Executive Director for Legal & Corporate Affairs at Hindustan Unilever Limited, and Vice President of Legal for South Asia, Unilever agrees that it is fair to take a view that such societal initiatives like CSR should not be mandated or made prescriptive. But he takes a step ahead and shares with Legal Era that if the non-prescriptive regime does not work, the Regulator has to fall back on mandating. So to balance the compliance requirements with ease of doing business, he makes a pertinent suggestion. "The government should consider a regime where the compliant companies are less hassled by the compliance burden and their compliance requirements are made proportionate to the actual compliance they demonstrate. As increasingly, companies become compliant, the compliance requirements for them can be proportionately reduced. If this principle is adopted, it will provide an incentive to companies to comply in full over some time. It is better to graduate to a graded structure of compliance instead of painting

7 *Karunjit Singh (2021), Explained: How CSR expenditure rules have changed for Indian companies, The Indian Express https://indianexpress.com/article/explained/corporate-social-responsibility-csr-rules-indian-companies-7163098/ [accessed on 10th April 2021]*

8 *Bharat Vasani & Varun Kannan for Cyril Amarchand Mangaldas (2021), New CSR Regime: Is it too prescriptive?, Bloomberg Quint https://www.bloombergquint.com/law-and-policy/new-csr-regime-is-it-too-prescriptive [accessed on 10th April 2021]*

9 *Press Trust of India (2021), CSR shouldn't be legally mandated, charity must come from within: Premji, Business Standard https://www.business-standard.com/article/companies/csr-shouldn-t-be-legally-mandated-charity-must-comefromwithinpremji121022000647_1.html#:~:text=%C2%ABBack,CSR%20shouldn't%20be%20legally%20mandated%2C%20charity,must%20come%20from%20within%3A%20Premji&text=Philanthropy%20or%20charity%20or%20contribution,must%20follow%20it%2C%20Premji%20said [accessed on 10th April]*

everyone with the same brush."

He goes on to opine succinctly, "The objective should be to reach a level of maturity where the Government only monitors that the activity being undertaken is a notified permitted activity and the amount being incurred is not less than 2% of the average net profits of the company over the last three financial years. This approach will build trust, transparency, and compliance. A start should be made to give confidence to the corporate sector."

Dev Bajpai also brings out another observation which is to let the Corporate Social Responsibility Committee lead this agenda in the Company. He understands, "This Committee has the mandate in law to formulate a Policy, ensure permitted activities are undertaken that are consistent with the Policy and the amount as mandated is spent. The Board should have an oversight role to ensure that the CSR Committee is doing its job. The amended provisions have the effect of requiring the Board to play a more active role in this area despite there being an expert Committee. If required, the membership of Independent Directors can be increased in the Committee, but the CSR Committee should be tasked with meeting the obligations as spelled out in the amendments."

Anubhav Kapoor, the Director of Legal Affairs for Ford India Private Limited, shares his opinion with Legal Era that while making impact assessment mandatory is a good move from the government as it provides some accountability to the bigger ongoing projects, there are a few answers needed. "There are no checks or suggested indicators prescribed for these assessments which makes us wonder, how is the government going to analyze the legitimacy of the Impact Assessment reports? It is still not clear what exactly the outcome will be after an impact assessment. What if the assessment results are poor? Will the government investigate this specifically or would it ask the corporate to shut down the project? Will the authorized spend of five percent of the total CSR expenditure or fifty lakh rupees, whichever is less for Impact assessment be treated as part of the project cost, or will be allowed separately in addition to the allowed expenditure of five percent for administrative overheads? And many more."

He suggests, "While it is appreciated that the new regulations have the effect of reducing the excessive discretion in the hands of a company and the rules will bring some uniformity by laying down the procedures to be followed in certain respects, however, certain aspects introduced in the new regulation like the one stated above does require timely redressal. A statement from the government can remove these ambiguities."

What can we expect?

The changes to section 135 of the Companies Act, 2013 call for active and substantial participation of every organization.

Rabindra Jhunjhunwala and Parag Bhide who is Partner and Principal Associate, respectively, at Khaitan & Co., share with Legal Era that the Amendment Rules have overhauled the existing CSR regime. These rules emphasize compliance with the CSR legislation in letter and spirit and encourage adherence to professional standards of implementation and execution.

They add that while some may feel that the new

RABINDRA JHUNJHUNWALA
Partner
Khaitan & Co.

PARAG BHIDE
Principal Associate
Khaitan & Co.

CSR regime has become rather too prescriptive, these changes will encourage both corporates and NGOs to adhere to professional standards of implementation and execution.

In their words, "As an action point, this will necessitate many companies to closely review and take a hard look at the intent and content of their CSR initiatives to align with the enhanced compliance expectations."

In the current nascent stage of implementation, it may be difficult to predict the sustained impact of these rules. Probably, it is only with the release of next year's CSR reports that we can begin to evaluate the efficacy of these new amendments, identify avenues that require more clarity for guidance, and even the pain points circumscribing execution for businesses.

4 years of GST

A MIXED BAG?

"Repeated amendments in GST laws including several retrospective ones coupled with aggressive recovery tactic attempts by tax officers have made GST a hotbed for litigation". The point about MSME doesn't reflect the essence of the article well.

Background

1. We have come a long way since the idea of the Goods and Services Tax ("GST") was first mooted in the Budget speech in 2006-07. The First Discussion Paper on GST in India was published in November 2009 by the Empowered Committee of State Finance Ministers categorically culled out the following benefits of GST:

   a) Removal of cascading effect of taxes;
   b) Comprehensive tax reform benefiting the industry, trade, agriculture and consumers at large;
   c) Increased levels of compliance by taxpayers; and
   d) Improved tax collections by widening of tax base.

2. The push for bringing in GST gained serious momentum with the introduction of Constitution (One Hundred and Twenty-Second Amendment) Bill, 2014 (the "Bill") in the 16th Lok Sabha on 19 December 2014. The key essence of the Bill was amendment of the Indian Constitution by providing concurrent powers to the State and Centre to tax supply of goods and services, and to promote co-operative federalism by creation of GST Council. It was eventually on 8 September 2016 that the Constitution (One Hundred and First Amendment) Act, 2016 was given assent to by the President of India (having been a passed a month earlier) paving the way for introduction of GST, as we see it today.

3. Finally, GST – the biggest tax reform of independent India, came into effect from 1 July 2017. Introduction of GST in the largest democracy of the world was no small achievement and herculean efforts have undoubtedly gone into its implementation. It has been an eventful 4 years since then with more than 700 notifications and 150 Circulars already having been issued. However, thus far, GST has been a mixed bag of hits and misses.

What went right

1. ***Relative simplification:*** One of the major highlights of GST was promoting comparative simplification by subsuming multiple tax laws at State level (VAT, CST, Entry Tax, Entertainment Tax, Luxury Tax, Taxes on lotteries, betting and gambling, etc.) and Central Level (Central Excise, Service Tax, Cess, etc.), and introducing one single comprehensive tax regime true to its tagline – "One Nation One Tax". Although there are as many State/Union Territory GST laws as States and Union Territories, all of them are a replica of the Central Goods and Services Tax Act, 2017 (the "CGST Act") and hence, cumulatively form one legal system.

2. ***Increased formalization of the economy:*** GST has contributed significantly towards formalization and digitization of the Indian economy and consequent transparency – the benefits of this can be seen from the surge in GST (as well as income tax) collection in the recent months (GST collections crossed ₹ 1 lakh crore in May 2021, for the eighth time in a row despite the pandemic).

3. ***Comparative reduction in cascading effect of taxes:*** Prior to GST, taxes leviable by the Central Government were not permitted to be set off against the taxes payable to the State Governments and vice versa. This led to a cascading situation of "tax-on-tax" thereby increasing the tax cost of goods or services being supplied. Post advent of GST, this cascading effect of taxes has been eliminated to a large extent with set-off of input taxes being available at each stage of value addition.

   However, there is a long way to go before complete removal of cascading effect of taxes as a long list of restrictions on input tax credits

RAHUL DHANUKA
Partner (Indirect Taxes)

SUDIPTA BHATTACHARJEE
Partner (Indirect Taxes)

KHAITAN &CO
Advocates since 1911

provided in Section 17(5) of the CGST Act is a clear deviation from this underlying principle and has in fact been challenged in various High Courts.

4. ***Reduced compliance burden across multiple taxes***: For large players with a pan-India presence (especially in the manufacturing/ trading business), the overall compliance across multiple tax laws has reduced.

5. ***Automated indirect tax ecosystem:*** IT forms the backbone of the GST ecosystem and to automate tax reform of such a magnitude calls for some serious accolades despite the numerous of glitches experienced over the years. Under the GST regime, application for registration, issuance of invoices, filing of returns, generating waybills, obtaining letter of undertaking, etc., have been automated, thereby reducing the need for manual interface with the department. Besides, the processing of adjudication and appeals have also been partly made online. This has made compliance easier, faster and convenient.

6. ***Pro-active approach in addressing the concerns of the industry:*** The GST Council as well as the Central Board of Indirect Taxes and Customs have been pro-active in addressing the concerns of the industry by issuing requisite clarifications. Under the erstwhile regimes, it was difficult to get a clarity on a timely basis due to interplay of central and state taxes.

What could have been better under GST

1. ***Focus on ensuring ease of business for the MSME sector:*** Despite honest and genuine intentions, GST has often been a pain-point for the MSME sector. The dependence on IT infrastructure, increased frequency of filing returns, frequent amendments in law, and the complexity of the new rules have made it difficult for many in the MSME sector to comply with the GST laws. For instance, a service provider under the former service tax laws was required to file 2 returns in a year whereas under the GST regime, it may be required to file 24 returns in a year (12 GSTR 3B returns and 12 GSTR 1 returns). Moreover, in the absence of a facility akin to a centralized registration, the service provider may be required to obtain registration in as many

states as it may have operations. Besides, technical glitches and connectivity issues especially in the far-flung areas, have also made timely compliance difficult for the MSME sector. Given the employment generation potential of MSMEs, the government/GST Council may need to create a specific set of relaxations for the MSME sector.

2. ***Lack of stability in laws***: The ever-changing GST laws including several retrospective amendments coupled with an overzealous drive by the tax officers to recover revenue for meeting fiscal targets has made GST a hotbed for litigation. As per some estimates, in a short span of 4 years, there have already been around 1400 advance rulings, 200 anti-profiteering rulings, 1100 high court judgments and 50 Supreme Court judgments. The success of any tax reform depends upon its stability and clarity and therefore, and it is in the interest of every stakeholder that the provisions of law should be made clear and unambiguous.

3. ***Advance Ruling Authority:*** – The GST law contains provisions for seeking advance rulings to seek clarity. However, the execution of the said provisions has left a lot to be desired. Advance rulings are sometimes perceived as being pro-revenue. More importantly, contrary rulings by advance ruling authorities in different states on the same subject have made matters worse. Therefore, it is time that the government/GST Council should look at constituting a central advance ruling authority with at least one of the members being a judicial member for adjudicating all matters (irrespective of the place of supply).

4. ***Mindful tackling of alleged evasion cases:*** Tax evaders should indeed be taken to task. However, it is also equally important that innocent and compliant taxpayers should not be caught in the crossfire between such evaders and the revenue. A classic example of the same would be a case wherein Input Tax Credit is being denied to the compliant taxpayers for default on the part of errant and dishonest suppliers. Even the legislature in their bid to plug the loophole to tackle such evasion cases are making amendments in the provisions which are adversely affecting the compliant assessees. It is therefore desirable that tacking of evasion cases should be more objective, data-driven and thoughtful.

"While GST has indeed helped in increased formalization of the economy, perceived pro-revenue approach of the advance ruling authorities, overtly aggressive recovery and enforcement actions by tax officers and non-establishment of GST Appellate Tribunals even after 4 years have been major bugbears which need immediate corrective action".

5. ***Disbursement of refund amount:*** In spite of the refund drives launched by the Government from time to time, timely disposal of refund claims has been a cause of concern. Besides, the differential treatment to inputs, input services and capital goods in matters of granting refund has not helped things either. A lenient and pro-active approach in the matters of granting refund could have gone a long way in making GST more acceptable to the industry at large.

Suggestions:

changes that are required immediately

1. ***Inclusion of Petroleum products in the GST regime:*** To make GST a comprehensive tax reform and to also avoid the cascading effect of taxes, the government/GST Council should seriously consider inclusion of petroleum products under GST, given that almost a period of 4 years has elapsed since GST was introduced. These effects have become more pronounced in the recent past given the increasing fuel prices and the consequent inflationary impact.

2. ***Formation of GST Appellate Tribunal:*** GST law envisages setting up an appellate tribunal for GST related dispute resolution. While

it has been almost 4 years since GST was introduced, the GST Appellate Tribunal has still not been constituted. This has led to a severe backlog of appeal cases and undue burdening of High Courts. It is therefore imperative that the GST Appellate Tribunal should be constituted at the earliest.

Concluding thoughts:

While the journey so far has been a mixed bag, one hopes that the focus on streamlining GST and its implementation continues, and some of the points highlighted above are taken care of before we celebrate the fifth anniversary of GST.

ABOUT THE AUTHOR

Author: **Rahul Dhanuka**
Designation: *Partner*

Rahul Dhanuka is a Partner in the Indirect Tax Practice Group in the Kolkata office. He specializes in various indirect tax laws such as GST, State Excise Duty Customs and other international trade and regulatory laws. Rahul has also advised on SEZ laws, Foreign Trade Policy, Preferential trade Agreements and issues under legacy indirect taxes such as service tax, VAT and excise. He has extensive experience in advising clients on tax structuring options, input credit optimization, business transfer arrangements, tax risk mitigation strategies, amongst others. Rahul has represented clients before various forums starting from adjudicating authorities to High Court.

Author: **Sudipta Bhattacharjee**
Designation: *Partner*

Sudipta Bhattacharjee is a Partner in the Indirect Tax practice group in the Delhi NCR office. With over 16 years of experience, Sudipta specialises in Indirect Tax advisory including GST, customs, international trade laws, pre-GST indirect taxes, State Excise laws affecting alcoholic beverages industry as well as building /labor cess, tax controversy management and allied aspects of contract documentation/negotiation/disputes. Sudipta has co-authored a treatise on how GST applies vis-a-vis various types of EPC and construction contracts – this was published by Taxmann Publications and has received rave reviews - it is already on its seventh edition.

6TH ANNUAL

FORTY UNDER 40 2021

RISING Stars

Brought to you by Legal Era

Coming up in

SEPTEMBER 2021

(Date will be announced soon)

NOMINATION CLOSED

FOR MORE ENQUIRIES, PLEASE CALL:

Email us at: shruti@legalera.in | aditi@legalera.in

+91 8879634922 | +91 9967255222 | +91 9082628571

ORGANIZED BY LEGAL ERA

www.legaleraonline.com

INDEPENDENT DIRECTORS

A REALITY OR A CONCEPT?

Article By

AKHIL PRASAD

DIRECTOR, COUNTRY COUNSEL INDIA AND COMPANY SECRETARY AT BOEING

As a member of the Board of Directors, a General Counsel and a Company Secretary, I live and breathe the concept of independent directors. It is surprising that the "independent director" has been defined only as recently in the Companies Act, 2013 ("CA-2013") and till now remained under various guidelines issued by the Securities and Exchange Board of India ("SEBI"), as applicable to listed entities. If one were to do research under the CA-2013, the following in a nutshell,, would be the governance and expectations from an "independent director".

THE LEGAL FRAMEWORK

CA-2013

1. Sub-section (3) (d) of Section 134 (Financial statement, Board's report, etc.), requires that an independent director to provide a statement or declaration of independence under Sub-section (6) of Section 149 of CA-2013.
2. Sub-section (4) of Section 149 (Company to have Board of Directors), requires that every listed public company shall have at least one-third of the total number of directors as independent directors and the Central Government may prescribe the minimum number of independent directors in case of any class or classes of public companies. (Unlisted public companies should appoint at least two independent directors (a) If the paid up share capital is in excess of ₹10 crores (US$ 1.3 million); (b) If the turnover is in excess of ₹100 crores (US$ 13.3 million); and (c) If the total of all the outstanding loans, debentures and deposits is in excess of ₹50 crores (US$ 6.5 million).
3. Sub-section (6) of Section 149 (Company to have Board of Directors), outlines the key requisites of "independence" of independent directors.
4. Sub-section (8) of Section 149 (Company to have Board of Directors), requires that the company and independent directors shall abide by the provisions specified in Schedule IV - Code for Independent Directors.
5. Section 166 (Duties of directors), outlines duties of a Director, which independent directors are also required to follow and are in addition to those outlined in Schedule IV - Code for Independent Directors.

In addition to the above, a Company that seeks to appoint Independent Directors, (a) may select the candidates from databank of independent directors

(and undergo training programs as mandated by the Ministry of Corporate Affairs, Government of India) (Section 150); (b) provide justification of selection of independent directors in the explanatory statements to the notice to members of the company seeking their appointment at the general meeting (Section 150, Section 152); (c) appoint independent directors in the Audit Committee (Section 177) and the Nomination and Remuneration Committee and Stakeholders Relationship Committee ("NRC") (Section 178); (d) not remunerate them with stock options but provide remuneration by way of fee (Sub-section (5) of Section 197) or reimbursement of expenses for participation in the Board and other meetings and profit related commission as may be approved by the members;(e) ensure independent directors are appointed for no more than two consecutive terms of five years each (Section 149) and that they do not retire by rotation (Section 149, Section 152).

SEBI

In addition to the above requirements outlined in the CA-2013, SEBI, not to just address the concerns around efficacy of the independent directors but also to safeguard the larger interests of the minority shareholders, on March 01, 2021 came up with a consultation paper on 'Review of Regulatory Provisions Related to Independent Directors' ("Consultation Paper"), with the following recommendations:

1. Independence: It is proposed that the cooling period of a candidate to determine independence, be increased from "two years" to "three years" for relationship of such director and its relatives (including material pecuniary relationship) with the listed entity, its promoter or directors, its holding, subsidiary or associate companies and shareholding in the listed entity; and to retain a cooling period of three years for such person either himself/herself or any of its relatives have been in the position of key managerial personnel ("KMPs").
2. Appointment and Re-appointment: It is being proposed that in addition to the right of the majority shareholders to vote for appointment of independent directors (by ordinary resolution for appointment and special resolution for re-appointment), an approval should also be sought by 'majority of the minority' (simple majority of shareholders, other than the promoter and promoter group) shareholders. Likewise, removal of independent directors, will follow a similar approval sequence.
3. Independent Director as Additional Directors and Casual Vacancy: It is proposed that independent director shall be appointed on the board only with prior approval of the shareholders at a general meeting. In case, of a casual vacancy, the approval of shareholders should be taken within a maximum period of 3 (three) months.
4. Resignation of Independent Directors: It is proposed that the resignation letter of an independent director shall be accompanied with a list of present directorships and membership in board committees. There should be a cooling-off period of 1 (one) year before a director can transition from an independent director to a whole-time director in the same company.
5. Review of Remuneration: Under the LODR, independent directors are permitted to be paid sitting fees (maximum of ₹1,00,000) besides being entitled to profit linked commission within an overall limit and re-imbursement of expenses and shall not be entitled to stock options. The proposals are varied between to remove profit linked commission and increase the sitting fees versus linking remuneration to profit or performance linked commission to ensure accountability and risk sharing.
6. Other Disclosures: It is being recommended that the NRC while identifying, shortlisting and selecting suitable candidates, basis skills, knowledge and experience on the Board, should prepare a report on the responsibilities and duties affiliated with a particular appointment and examine how closely each candidate satisfies the description. The NRC should also disclose the process followed to identify a candidate. Also it is recommended that the strength of the independent directors on NRC be increased from fifty percent to two-thirds.

From a review of the above framework on the independent directors, it seems that from a legal and regulatory standpoint, changes are in the desired direction. As we have seen that expectations from an independent director are manifold both under CA-2013 and SEBI provisions, therefore, unless such person goes through a vigorous process, as outlined above, it would be difficult for a person to be appointed as an independent director. I would, however, also recommend that the Board's Report should include a report by the Independent Directors on (a) business resiliency and sustainability; (b) ethical business conduct and fraud prevention; (c) some of the material aspects they addressed in the audit committee and the NRC; and any other aspects in line with the provisions of law, under which they are so appointed.

PERCEPTION

Basis what seems to being reported of late, it appears that the independent directors in publicly traded Indian companies were not acting to protect the interest of minority shareholders. Further individual/minority shareholders seem to be expressing concerns about the independence of independent directors, their effectiveness in tackling fraud, preventing selling-off of company assets without shareholder knowledge, and insider trading. Further, there are reports that the independent directors have become a political post. The Indian Institute of Corporate Affairs, a couple of years ago had reported that "Instead of experienced domain experts, preference is being given to ex-IAS or recently to political affinity, so the whole idea of independent director has been vitiated."

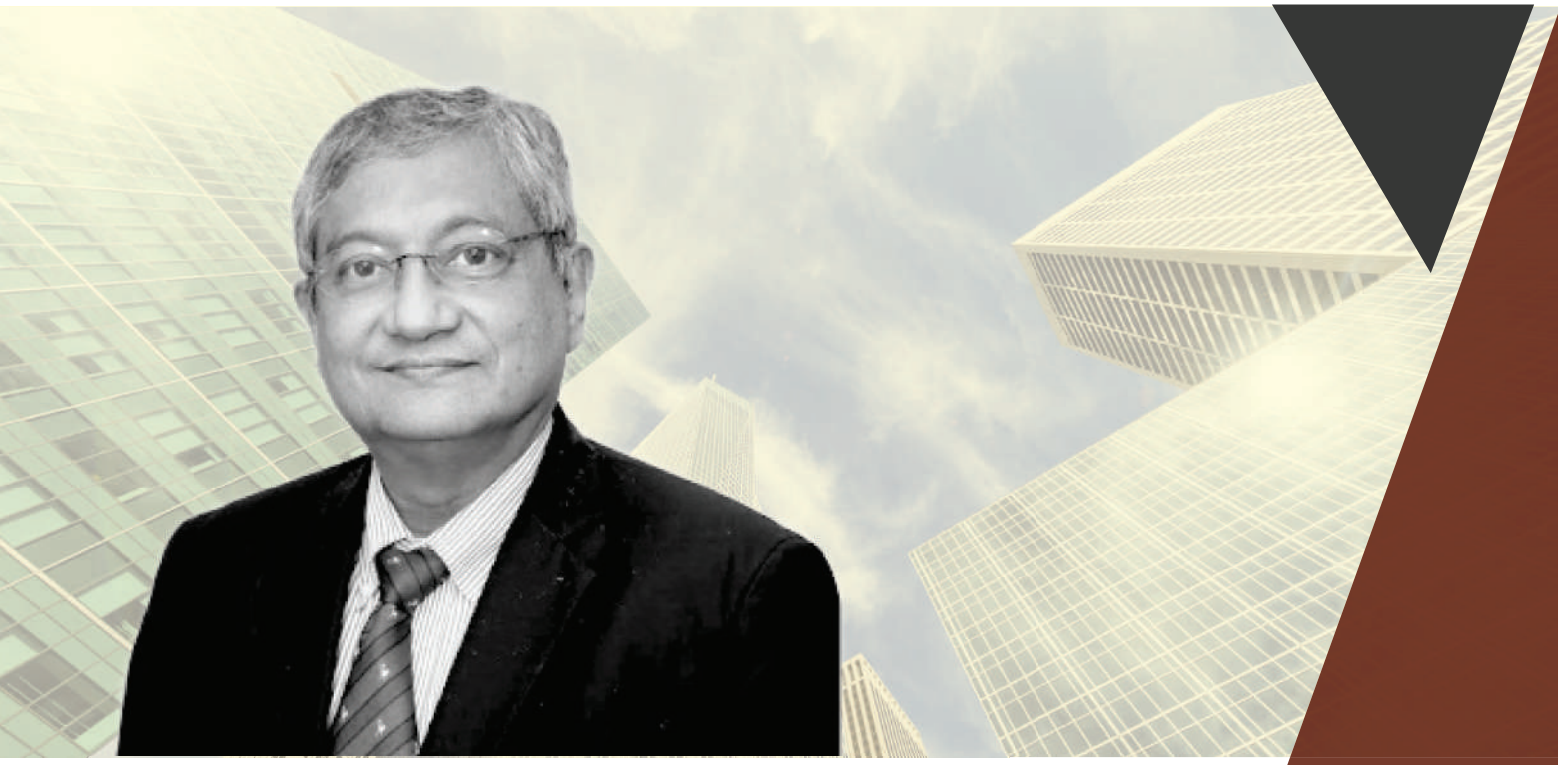
I would say that despite some stellar work that the lawmakers have undertaken to provide a regulatory mechanism and outline the roles and responsibilities of independent directors, it seems there is a gap between how some corporates are looking at the appointment and engagement of their independent directors. Indeed some corporations, would look at appointment of independent directors as a box ticking exercise than leveraging their capabilities as required under the requirements of law. Should independent directors be seen in failing in their responsibilities, shareholders activism need to step up their voice, leading to a greater role and effectiveness of their independent directors and/or bringing it to the attention of the regulators. The regulators should set up a process to address the grievances of the shareholders, especially for inaction or misconduct of the independent directors. What strikes me, is that the appointment of independent directors having been very highly skewed in the hands of the Board, its committees and the shareholders and stakeholders should also have a say in the appointment.

The role that an independent director needs to perform are not only for shareholders but also for stakeholders of a company, therefore, should not the latter (like the employees, creditors, trade partners, etc.) have some role to play or a say in their appointment? For example, should not a Bank which has provided large credit to the listed/public company and have nominee directors on the board of the borrower, expect that the nominee directors be treated as independent directors, so as to have a dominant role in the board room? Should not CA-2013 be amended to state that a "nominee director" (which under sub-section (7) to Section 149, has been defined as "nominee director" means a director nominated by any financial institution in pursuance of the provisions of any law for the time being in force, or of any agreement, or appointed by any Government, or any other person to represent its interests) be treated as an independent director. Similarly, should not large trade partners/ creditors to a company, as a part of their contractual arrangement may also negotiate to have independent directors on the board of the debtor to ensure effective governance? Likewise, for example for labor unions and there could be numerous examples for appointment of independent directors.

I would also add here that it is upon the management, how they want to utilize the independent directors, under the purview of law. Former bureaucrats, ex-IAS and the like due to their overall governance and analytical capabilities make a very good talent pool (like others from corporate sector) and should play a very active role in the governance of an organization. I would put the responsibility on the Chairman and the Chief Executive Officer and the Board to ensure that the independent directors are put to an effective use and be visible to stakeholders with their work than be visible only on the corporate websites. If stakeholders make a noise of ineffectiveness of the independent directors, such issues should be adequately addressed by the Audit Committee, in the Board's Report or by a regulator.

INDEPENDENCE

While both CA-2103 and SEBI requires that the remuneration of independent directors be paid by the Board, it requires a sound corporate culture, which ensures that the independent directors are able to work independently. I do believe that an independent should be adequately compensated for difficult work that they do, however, an independent director should be cognizant of the fact that their actions or inactions both could be adequately or adversely responded to. A "Yes-Man" (or Women) to the management may have a longer tenure in the organization, however, the reputation could be adversely impacted should things go adversely (alleged frauds at IL&FS, PMC Bank, Amrapali Group, Yes Bank, Kingfisher, Jet Airways, Reliance InfoCom… there are enough instances that the Yes-Mans have been adversely impacted, in addition to the Promoters). Therefore, independence is a very personal trait, though law elaborates, how independence should be achieved, it is a very personal issue, whether an individual wish to be independent.



ASHOK BARAT

CORPORATE ADVISOR AND BOARD MEMBER

"Institutions, unless flawed by design, do not fail, people do." This holds true for the universe of independent directors too; individual failures and abdication of responsibility has unfortunately created cynicism about the whole college of independent directors ignoring their contribution to the corporate governance framework. Failures are highlighted in the media and the courtrooms, successes remain hidden in the boardrooms and minutes. Independence is a state of mind and not of structures and situations. Whilst some prescriptions are important, an overdose of it creates a culture of compliance rather than commitment. There is a mistaken belief that strangers would make the best independent directors.

The concept of independent directors in India is evolving because a large part of the economy, and more so the bigger business entities, are still owner (promoter) driven. In the West most of the larger corporations have outgrown the presence of the owner or families. India is maybe half a century away before a larger part of the corporate landscape will be comprising of institutions where the owner and the management will be two different sets of people. The real maturity of the Board and its stewardship role is truly visible in action in these setups. There is need to demonstrate patience and maturity till then.

To be ready, there is clearly a need to develop capacity and capability of independent directors. Many of them today are friends and acquaintances of owners; of late large numbers are also coming from the corporate world or the bureaucracy. Though qualified and professional in approach, the role that they need to play as an independent director is very different. This transition has to be handled through a process of education, training and experience. It will take a while but will get there. It would not be sensible to be impatient and based on some cases of negligence and wrong doing to besmirch the entire institution of independent directors in India. The temptation of over regulating by more laws, vicious and disproportionate prosecution would be like killing the baby at birth. More importantly, the government should not step in to become a kind of an executive controller of independent directors.

RAJAT JAIN

FOUNDER DIRECTOR, PADUP VENTURES, INDEPENDENT DIRECTOR

The role of Independent Directors on the Board of a Company is a combination of monitoring and advisory functions. The importance of each of these functions is obvious and varies from company to company. While good compliance and corporate governance is non-negotiable, the advisory function in most cases is quite overstated.

Most companies especially promoter driven ones take independent directors only when mandated by law, and their expectation mostly is to fulfill the statutory obligations. The strategy inputs are a 'good to have' and purely advisory in nature anyway. The big question is "Are independent directors truly independent?"

The issue around skills and training of independent directors and their ability and competence to grasp the nitty gritty of law is also an important one that needs to be addressed effectively. In many cases, the independent directors just coast along with the Board without being able to exercise independent judgment. Furthermore, their role is often compromised by a lack of time, domain knowledge, and resources needed to comprehend the complex information and data provided by the company.

One of the big issues around the independent directors is that the current legal regulations fail to address the fundamental issues that affect the liability framework of independent directors. At present, the liability framework governing independent directors entrusts them with disproportional liability risks and duties.

MR PRASANNA

ADVOCATE, ARBITRATOR & MEDIATOR
FORMER GENERAL COUNSEL: ADITYA BIRLA GROUP

If someone should ask me if there has been a lot of hype about Independent Directors and as to how they have transformed the governance landscape, I would be hesitant to dismiss that there is some hype. Independence is a state of mind. Despite certain legal and regulatory parameters set out to determine independence. the assertion of independence comes in the form of certification by the potential independent director candidate. It is no doubt expected of the NRC to screen independent director candidates and choose the best suited for that role. How then is that role defined? In other words, how does the independent director, from his appearance, demonstrate that he/she is independent? By appearance I mean, the manner in which he/she actually conducts himself in the course of Board & Committee deliberations.

Consequently, what is in the mind must translate into action. If an independent director believes there's something amiss but does nothing about it, then his/her independence is in the mind but not in his actions. Among many attributes that an independent director ought to possess, let me pick possessing relevant 'knowledge' of business/ Industry as one such attribute. In my opinion, displaying ignorance is a virtue as compared to the vice of half-baked knowledge. An independent director ought not to be afraid of asking questions for fear of being smirked at by his other Board colleagues. Questioning is a manifestation of inquisitiveness. If quest for information is stifled then the independent director would be inhibiting independence not just in his mind but also in action.

The role of the "Independent Directors" as champions of good governance is, to my mind, is seen at the level of each individual and his or her reputation of acting independently. I am not sure I can say the same thing about all the Independent Directors as a whole.

SUMMARY

The law can only be an enabler or definer of what an independent director "should do". What an independent director "can do", is what an individual believes one should do. The boundary of law is wide and is open to interpretations. While at one end of the boundary, below which could lead to violations of law, an independent director may want to keep a low trajectory and wish to dance to the tune of the promoters, be a Yes-Man and only act to be a tick in the box; the other end like a horizon is limitless and given the empowerment Indian law provides, can be a huge contributor in keeping the corporate ship sailing at all times both in turbulent or calm waters. The choice to be at what side of spectrum is purely personal. If you listen to your conscience and take action accordingly in the best interest of the organization, you gain independence that help you achieve faith, trust, confidence and support of the organization and stakeholders as a whole. The law in India on independent directors has evolved and shall continue to do so, we as independent directors, should imbibe the intent of law and act in accordance with the best interest of the organization, doing things in the most ethical manner, even at the risk of losing one's assignment. A management that makes you avoid listening to your conscience, is making you lose your independence, reputation and ethics, which once lost, cannot be purchased with any amount of money you may make. So always do the right thing and lean on law, should you seek guidance, how to be independent and effective.

NEW STRATEGIC CHOICES:

INDIAN SUPREME COURT RULES THAT TWO INDIAN PARTIES CAN CHOOSE A FOREIGN SEAT OF ARBITRATION

The SC found that nothing stands in the way of party autonomy in designating a seat of arbitration outside India, even if both parties are Indian nationals

In a landmark ruling, the Indian Supreme Court in PASL Wind Solutions Private Limited v GE Power Conversion India Private Limited (Civil Appeal No. 1647 of 2021) has held that two companies incorporated in India can validly designate a foreign seat for arbitration. Previously, there had been inconsistent judicial precedent on this issue and lingering concerns that an offshore arbitration award made pursuant to an arbitration agreement between exclusively Indian parties could be susceptible to challenge in the Indian courts.

The ruling also opens doors to strategic new choices when arbitration agreements are negotiated in transactions between Indian parties. What are the advantages of choosing a foreign seat of arbitration, and does it always make sense to do so? Are there any residual benefits of seating proceedings in India? These are questions relevant not only to domestic Indian parties, but also to foreign investors doing business in India via a local Indian subsidiary.

The dispute in question

The disputing parties were PASL Wind Solutions (PASL) and GE Power Conversion India (GE Power), both companies incorporated and with their registered offices in India. A dispute arose under certain purchase orders and the parties entered into a settlement agreement which provided for arbitration in Zurich under the ICC Arbitration Rules.

PASL commenced arbitration under the settlement agreement. The tribunal by way of a procedural order found the parties had freely agreed on Zurich as the seat of arbitration, and hearings in the arbitration were conducted in Mumbai. The tribunal dismissed PASL's claim and issued a costs award in favor of GE Power. PASL contested enforcement of the costs award in India on the basis that the parties could not have validly agreed on a foreign seat. The matter came before the Supreme Court on appeal.

The Supreme Court's analysis

Ruling that two domestic Indian parties are entitled to elect for foreign-seated arbitration, the Supreme Court's reasoning was essentially as follows:

- PASL had argued that the legislative framework under Part II of the Indian Arbitration and Conciliation Act 1996 only contemplated the enforcement of awards arising from an "international commercial arbitration" and would not extend to an award involving two Indian companies. The Court disagreed, finding that the costs award was a "foreign award" under section 44 which was enforceable under Part II of the Act.

- The Indian Contract Act does not preclude two Indian parties from referring their disputes to arbitration outside India.

- There is no clear and undeniable public harm in permitting two Indian nationals to choose a foreign seat of arbitration. In any case, the enforcement of a foreign award can still be resisted in India on grounds contained in section 48 of the Arbitration Act, which include the foreign award being contrary to the public policy of India.

In summary, the Supreme Court found that nothing stands in the way of party autonomy in designating a seat of arbitration outside India, even if both parties are Indian nationals.

Comment

The Supreme Court's ruling will have a tangible impact on the negotiation of arbitration agreements amongst Indian parties. While India's standing as a seat of arbitration has improved significantly in recent years (following the 2015 and 2019 amendments to the Arbitration Act), there are still various reasons why parties to Indian transactions may prefer an international seat (such as Singapore, Hong Kong, or London) over an Indian seat:

- If recourse to the courts is needed during arbitration proceedings, the court system in the international seats of arbitration is likely to be more efficient than the Indian courts, which are overburdened and well-known for delays;

- When arbitrating outside India, there is (generally speaking) a reduced risk that parties will be dragged into Indian court proceedings ancillary to the arbitration;

Kabir Singh
Partner

Matthew Brown
Senior Associate

CLIFFORD
CHANCE

The Supreme Court has confirmed that selection of a foreign seat of arbitration is valid. It should therefore no longer be open to aggrieved parties in arbitrations which involve exclusively Indian companies to make jurisdictional challenges or resist enforcement of awards on the basis that the choice of foreign seat was impermissible.

- Strictly speaking, the grounds for resisting enforcement of foreign awards should be subject to a narrower scope of review than an award between Indian companies made in India, which may be set aside "if the Court finds that the award is vitiated by patent illegality appearing on the face of the award" (under section 34(2A) of the Arbitration Act). There is no available ground to resist enforcement of foreign awards on the basis of "patent illegality" under section 48 of the Arbitration Act.

- As the Supreme Court confirmed in PASL Wind, parties to arbitrations seated outside India (even where all the parties to a dispute are Indian) are still entitled to apply for interim relief before the Indian courts under section 9 of the Arbitration Act.

There are even unlikely to be any practical downsides to choosing a foreign seat, given that parties can still agree to hold physical hearings in India as a matter of practical convenience.

On the other hand, many of the perceived drawbacks of India-seated arbitration can often be mitigated by adopting a set of institutional arbitration rules such as the SIAC or the ICC, so that the arbitration is administered by a reputable

international arbitral institution instead of relying on ad hoc procedure under the Arbitration Act. Another potentially useful aspect of India-seated arbitration relates to the enforceability of urgent interim orders made by an emergency arbitrator.

In Amazon.com NV Investment Holdings LLC v. Future Retail Ltd. and Future Coupons Pvt. Ltd, the Delhi High Court recently held that an award of a SIAC emergency arbitrator rendered in an India-seated arbitration is in principle enforceable under section 17(2) of the Arbitration Act. For the time being, the enforceability of emergency awards made in foreign-seated arbitrations remains unclear.

It is well-known that Indian parties are already frequent users of arbitration seated outside India (for instance in 2020, Indian parties were again the top foreign user at the Singapore International Arbitration Centre). While, overall, the Supreme Court's decision in PASL Wind is likely to accelerate this trend, there are nonetheless a range of factors for Indian parties to consider when deciding whether or not to choose a foreign seat of arbitration for any particular transaction.

Content relating to India is based on our experience as international counsel representing clients in their business activities in India. We are not permitted to advise on the laws of India and should such advise be required, we would work alongside a domestic law firm.

ABOUT THE AUTHOR

Author: **Kabir Singh**
Designation: *Partner*

Kabir Singh is a Partner in the International Arbitration and Dispute Resolution practice at Clifford Chance in Singapore. He specializes in complex, cross-border disputes with a focus on India, Indonesia, and South East Asia. His clients includes large multinational corporations, international banks and financial institutions with presence across APAC.

Author: **Matthew Brown**
Designation: *Senior Associate*

Matthew Brown is a senior associate in the International Arbitration and Dispute Resolution practice at Clifford Chance in Singapore. He has represented clients in proceedings under the SIAC, ICC, LCIA and ICSID arbitration rules. His wide-ranging practice involves complex cross-border disputes, with a focus on those originating out of South East Asia, and India and he has received various arbitral appointments.

LEGAL ERA

LEGAL EDUCATION CONGRESS & AWARDS 2021

Dr. Madhava Menon Awards for Educational Excellence

NOMINATION OPEN

Acting Within The

CODE OF ETHICS

Is The Minimum Required For

A LAWYER

- Dr. N.R. Madhava Menon

FOR MORE ENQUIRIES, PLEASE CALL:

Email us at: shruti@legalera.in | khushbu@legalera.in

+91 8879634922 | +91 9967255222 | +91 9082628571

DO ANTI-EXECUTION INJUNCTIONS STEP ON THE TOES OF FOREIGN COURTS?

The Delhi HC's extensive analysis of the law regarding the grant of cross-border anti-execution injunctions is a welcome development for Indian private international law

The High Court of Delhi (**"Delhi HC"**) has decided an interim application (**"Application"**) for an anti-execution injunction in the case ***of Interdigital Technology Corporation and Others v. Xiaomi Corporation and Others***[1] (**"IDG v. Xiaomi"**). The issues addressed in this judgment regarding anti-execution injunctions merit discussion as they are unprecedented and are res integra in Indian jurisprudence. It paves way for the tests that a Court should consider while passing such an order.

Facts of the case

Interdigital Technology Corporation and others (**"IDG"**) had filed the Suit (**"Suit"**) before the Delhi HC alleging that Xiaomi Corporation and others (**"Xiaomi"**) infringed on its Standard Essential Patents (**"SEP"**) for manufacturing of their cellular handsets. However, prior to the institution of this Suit, Xiaomi had filed a case regarding determination of FRAND royalties (**"Wuhan Suit"**) before the Wuhan Intermediate People's Court (**"Wuhan Court"**) and had obtained an ex-parte anti-suit injunction order on September 23, 2020 (**"Wuhan Order"**). The order barred IDG from initiating any proceeding in any jurisdiction (specifically before the Delhi HC) against Xiaomi regarding the SEPs involved in the case. The Wuhan Order also imposed a fine of RMB one million per day for any violation of its directions (including the prosecution of the Suit before the Delhi HC).

Key Issues

Tasked with navigating between the conflicting issues of the preservation of Indian law and yet not falling foul of the principle of comity of courts (and its cross-border implications), Justice C. Hari Shankar rendered his judgment after mapping the jurisprudence around anti-suit injunctions, anti-execution injunctions, and the principle of comity of courts, among others.

At the very outset, he classified the relief sought by the Application as the grant of an anti-execution injunction, and not an anti-suit injunction, as the Application was filed after the passing of the Wuhan Order. The broad issues covered by this decision are as under:

1 *See: Judgment dated May 03, 2021 in Interdigital Technology Corporation and Others v. Xiaomi Corporation and Others bearing I.A. No. 8772/2020 in CS(COMM) No. 295/2020.*

Radhika Dubey
Partner

Shatrajit Banerji
Principal Associate

Himaa Sudhir
Associate

cyril amarchand mangaldas
ahead of the curve

Comity of Courts

The concept of anti-suit injunctions and anti-execution injunctions are prima facie at loggerheads with the principle of comity of courts.

The Delhi HC took note of the case of ***Satya v. Teja Singh*** in which the Supreme Court of India (**"SC"**) held that "no country is bound by comity to give effect in its courts to divorce laws of another country which are repugnant to its own laws and public policy".[2] Furthering this line of thought, the Delhi HC observed that when a decision/order of a foreign court "entrenches on the lawful invocation of remedies known to law, by a litigant in another sovereign country," then the principle of comity of courts cannot be used to prevent the court from guarding against an incursion into its jurisdiction and protecting the right of its citizen to legal redress.[3]

Anti-Suit Injunctions and Anti-Anti-Suit Injunction Injunctions

As the law regarding the grant of cross-border anti-execution injunctions and anti-anti-suit injunction injunctions (anti-suit injunctions against proceedings for anti-suit injunctions before a foreign court) is res integra, the Delhi HC prefaced its analysis regarding them by distilling the jurisprudence regarding the grant of anti-suit injunctions as settled by the SC.

The law as laid down by the SC

In ***O.N.G.C. v. Western Co. of North America,***[4] the SC discussed that cross-border anti-suit injunctions should be issued in situations where the continuation of proceedings in the foreign court would be oppressive to the other party.[5]

In ***Modi Entertainment Network v. W.S.G. Cricket Pte Ltd,***[6] the SC had inter alia laid down clear parameters for granting an anti-suit injunction, such as:

(i) the defendant, against whom injunction is sought, is amenable to the personal jurisdiction of the court,

(ii) if the injunction is declined, the ends of justice will be defeated and injustice will

2 *See: Para 18 of Satya v. Teja Singh (1975) 1 SCC 120.*
3 *See: Para 90 of IDG v. Xiaomi.*
4 *See: Para 18 of (1987) 1 SCC 496.*
5 *See: Para 18 and 19 of IDG v. Xiaomi.*
6 *See: Para 24 of (2003) 4 SCC 341.*

be perpetuated, and

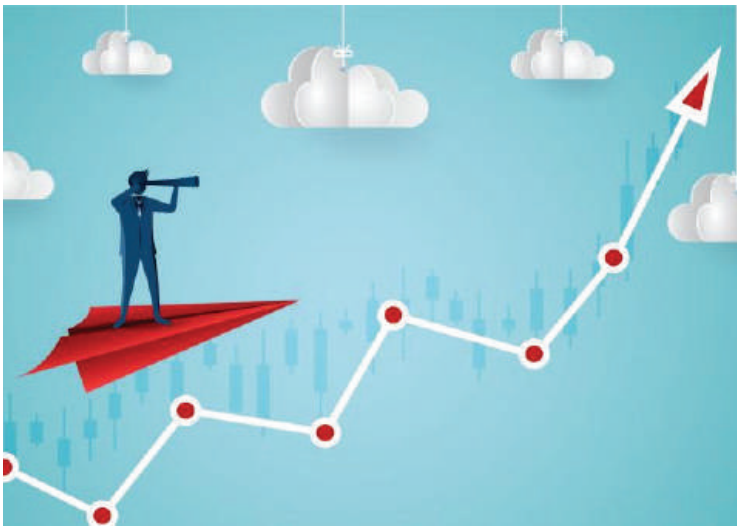
(iii) the principle of comity – respect for the court in which the commencement or continuance of action/proceeding is sought to be restrained – must be borne in mind.

The SC has further held that the principles that govern the grant of anti-suit injunction were the same as those which apply to grant of injunction per se as injunctions are governed by the doctrine of equity.[7] The grant of anti-suit injunctions would therefore be governed by the troika test laid in Order XXXIX of the Code of Civil Procedure (**"CPC"**) – prima facie case, balance of convenience, and irreparable loss.

The Delhi HC after taking note of the aforesaid judgment also discussed the conditions for issuance of cross-border anti-suit injunctions in other jurisdictions. For example, the **Unterweser** factors propounded in Germany gives a list of conditions under which a foreign anti-suit injunction can be justified, including, inter alia, whether the foreign litigation is vexatious and oppressive, prejudicial to equitable considerations, and whether it threatens the issuing court's in rem or quasi in rem jurisdiction.[8]

Anti-Execution Injunctions

Further, the Delhi HC rejected Xiaomi's assertion, relying on the decision of the Singapore Court of Appeals in ***Sun Travels & Tours Pvt Ltd v. Hilton International Manage (Maldives) Pvt. Ltd. ("Sun Travels case"),*** that the grant of anti-execution injunctions must necessarily require more judicial circumspection than the grant of anti-suit injunctions. In, the Sun Travels case, it was held that anti-execution injunctions end up in "nullifying the foreign judgment or stripping the judgment of any legal effect when only the foreign court can set aside or vary its own judgments".[9] The Delhi HC conversely has held that the issuance of anti-execution injunctions requires less caution because at that stage, the foreign courts are functus officio (as proceedings before them have concluded) and the anti-execution injunction would only affect



the enforcement of the foreign court's decision whereas an anti-suit injunction would interfere in ongoing proceedings before a foreign court.[10]

The Delhi HC also noted that although anti-execution injunctions are to be issued in rare circumstances after giving due consideration to the facts of the case, 'exceptionality' as a criterion would be vague and would not be a jurisdictional requirement for the granting of an anti-execution injunction.[11]

Conditions laid down in by the DHC for the Issuance of Anti-Suit and Anti-Execution Injunctions

The Delhi HC taking note of the various judicial precedents regarding anti-suit and anti-execution injunctions, laid down certain conditions to be borne in mind while granting such injunctions, which are summarized as under:

(i) an anti-suit injunction should only be granted in rare cases, and not for the mere asking;

(ii) the court granting the anti-suit injunction should have sufficient interest in the subject matter and is required to be the natural forum;

(iii) the definitive test to understand whether an injunction should be granted is when its refusal would lead to the possibility of palpable and gross injustice;

---

7 See: Para 12 of Dinesh Singh Thakur v. Sonal Thakur (2018) 17 SCC 12.

8 See: In re Unterweser Reederei GMBH, 428 F. 2d. 888, 896 (5th Cir. 1970), as discussed in Microsoft Corp. v Motorola Inc. 696 F. 3d. 872 (9th cir. 2012) and Para 74 of IDG v. Xiaomi.

9 See: Para 97 and 98 of Sun Travels & Tours Pvt Ltd v. Hilton International Manage (Maldives) Pvt. Ltd, (2019) SGCA 10, and Para 67 of IDG v. Xiaomi.

10 See: Para 84 of IDG v. Xiaomi,.

11 See: SAS Institute Inc v. World Programming Limited [2020] EWCA Civ 599, and Para 51 of IDG v. Xiaomi.

> ***The Delhi HC observed that when a decision/order of a foreign court "entrenches on the lawful invocation of remedies known to law, by a litigant in another sovereign country," then the principle of comity of courts cannot be used to prevent the court from guarding against an incursion into its jurisdiction and protecting the right of its citizen to legal redress."***

(iv) an injunction granted in foreign proceedings/ orders which interferes with the right of a party to pursue legal remedies before the competent forum would be oppressive;

(v) the principle of comity of courts was of very little importance in situations where the injunction was being sought against a foreign proceeding/order that was oppressive to the applicant; and that

(vi) there was no requirement to consider anti-suit injunctions so exceptional and courts need not hesitate if the grounds for grant of injunction are made out.

Additionally, the Delhi HC listed certain instances in which anti-execution injunctions would be justified and observed that in cases of patent infringement, such as the case at hand, the patent holder should have the power to choose the patents which they desired to enforce and as the only remedy available to patent holders is to file an anti-infringement suit, any order barring the patent holders from initiating such action would be against their right to seek legal redressal. The Delhi HC rejected Xiaomi's contention that there was an overlap between the issues arising in the Suit and the Wuhan Suit as the former may or may not discuss the subject of determination of FRAND royalties.

Concluding Observations

This judgment has clarified important issues in the Indian jurisprudence regarding the grant of cross-border anti-execution injunctions. The Delhi HC's extensive analysis of the law regarding the grant of cross-border anti-execution injunctions is a welcome development for Indian private international law. It will be interesting to see how other Courts in India will approach similar situations.

ABOUT THE AUTHOR

Author: **Radhika Dubey**
Designation: *Partner*

Radhika Dubey is a Partner in the Dispute Resolution Practice at the Delhi-NCR office of Cyril Amarchand Mangaldas. She focuses on dispute resolution relating to corporate and commercial litigation, with special focus on arbitration (domestic and international). She regularly represents clients before various fora including Tribunals, High Courts and the Supreme Court, in high stakes commercial disputes.

Author: **Shatrajit Banerji**
Designation: *Principal Associate*

Shatrajit Banerji is a Principal Associate Designate in the Dispute Resolution Practice at the Delhi-NCR office of Cyril Amarchand Mangaldas. Shatrajit focuses on dispute resolution, including arbitration (domestic and international), insolvency as well as other corporate and commercial litigation.

Author: **Himaa Sudhir**
Designation: *Associate*

Himaa is an Associate in the Dispute Resolution Practice at the Delhi-NCR office of Cyril Amarchand Mangaldas. Himaa advises on international and domestic commercial disputes before courts and arbitral tribunals.

Easy Way To Subscribe!

SUBSCRIPTION FORM

- **Subscription form for legaleraonline.com & Legal Era Magazine**

☐ Yes! I would like to subscribe to Legal Era

Please fill the form in CAPITAL LETTERS

Name : _____

Address : _____

_____

Pin : _____ City : _____ State : _____

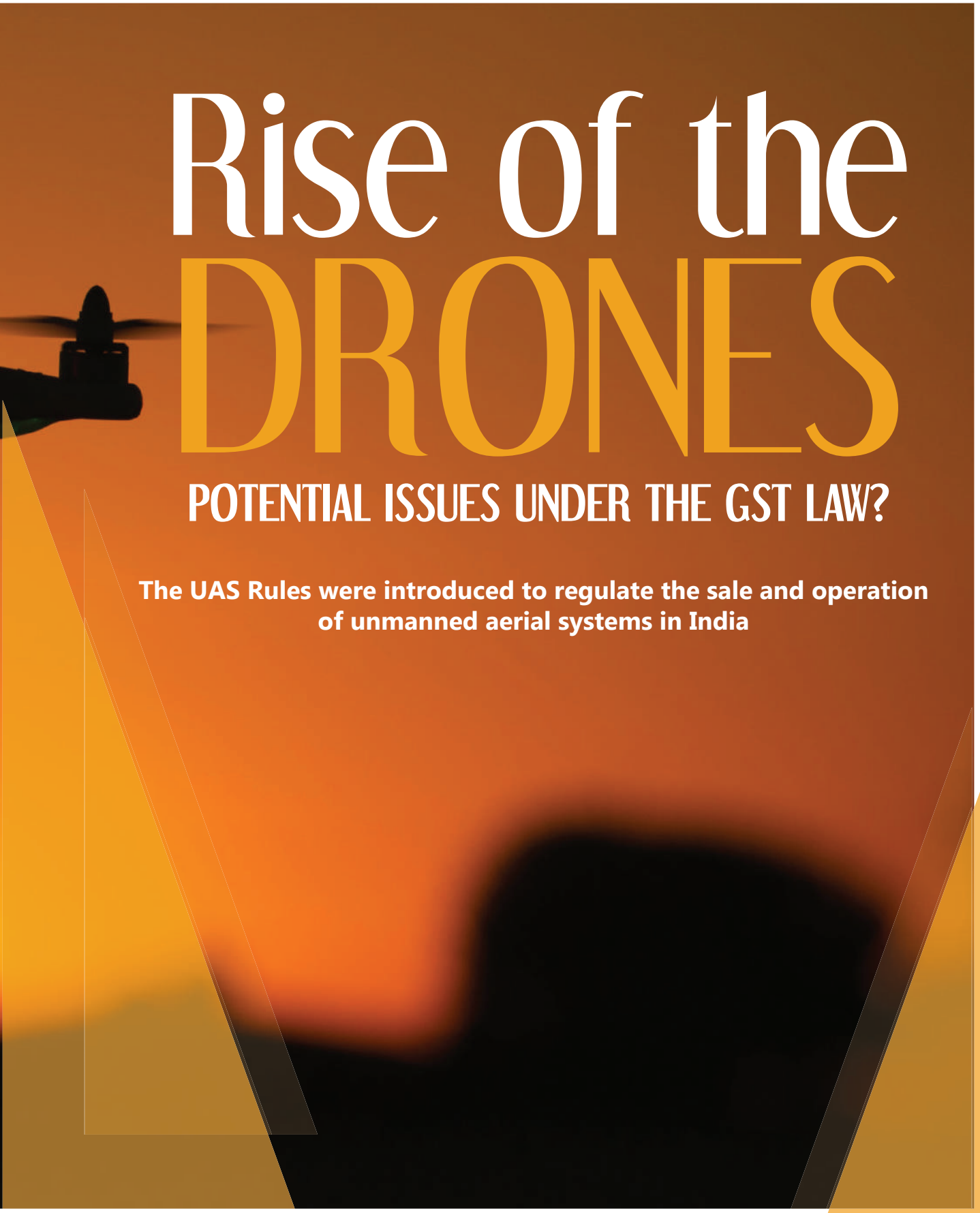
Mobile : _____ E-Mail : _____

Birthday : _____ Anniversary : _____ Occupation : _____

Please find enclosed DD/Cheque for : _____ Dated : _____

For Subscription Related Enquiries

Email: info@legalera.in OR Call: +91 8879694922



Rise of the DRONES

POTENTIAL ISSUES UNDER THE GST LAW?

The UAS Rules were introduced to regulate the sale and operation of unmanned aerial systems in India

Lakshmi Ratna Kancherla
Joint Partner

Mallows Priscilla P
Associate

Lakshmi Kumaran & Sridharan ATTORNEYS

In the recent past, "unmanned aerial systems" commonly, referred to as "drones" have been in the news[1]. On the one hand, drone importers, manufacturers are on their toes to ensure the compliance under the newly introduced Unmanned Aircraft System Rules, 2021 ('UAS Rules') effective from 12 March, 2021, while the logistics/delivery companies/electronic commerce operators were testing or awaiting approvals for delivering their supplies using drones under the specific exemption order(s) from the Ministry of Civil Aviation.[2]

UAS Rules - To whom do they apply?

The UAS Rules, have been enacted under the Aircraft Act, 1934.[3] The UAS Rules were introduced to regulate the sale and operation of unmanned aerial systems in India. UAS Rules bring in a set of obligations and compliances that every manufacturer, trader, operator and owner of an unmanned aircraft should comply with. Prior to the said UAS Rules, the Civil Aviation Requirements for Operation of Civil Remotely Piloted Aircraft System (RPAS)[4] provided for the regulation of civil remotely piloted aircraft systems, which are remotely piloted from a remote pilot station. The UAS Rules applies[5] to the following,

(a) *Unmanned Aircraft System (UAS) registered in India, wherever they may be; or*
(b) *a person owning or possessing or engaged in exporting, importing, manufacturing, trading, leasing, operating, transferring or maintaining an Unmanned Aircraft System in India; or*
(c) *all Unmanned Aircraft System for the time being in or over India.*

The terms 'drone' and 'unmanned aircraft' has been defined under Rule 2(x), Rule 2 (zw) of the UAS Rules. Drone has been defined to mean an unmanned aircraft. An 'unmanned aircraft' has been defined to mean an aircraft, which is intended to operate with no pilot on board.

The said Rules are exhaustive and provide the compliances for all kinds of stakeholders to whom they are made applicable. While the

1 *"India aims to launch revamped Digital Sky platform by end of 2021"https://economictimes.indiatimes.com/tech/information-tech/india-aims-to-launch-revamped-digitalsky-platform-by-end-of-2021/article-show/83308882.cms*
2 *Conditional Exemption Order No. AV-11013/2/2019-A-MOCA-Part(1) dated 06.01.2021.*
3 *Section 14 of the Aircraft Act, 1934.*
4 *CIVIL AVIATION REQUIREMENTS SECTION 3 – AIR TRANSPORT SERIES X PART I*
5 *Rule 1(3) of the UAS Rules*

stakeholders are grappling with the compliances under the UAS Rules, the emerging issues which are bound to arise under the GST Law in the future are outlined below.

Issues under GST Law

GST on Lease of UAS

- Various persons can trade/operate the UAS, the individuals/companies can also obtain the same on lease basis. Where the UAS is leased by the owner for a consideration, the said activity, would qualify as a supply of service[6] and the rate of tax payable by the lessor shall be on the rate applicable to goods[7].
- Where the owner/operator/manufacture operate different models (such as, hire-purchase, transfer of title where there is part payment of consideration etc.) in respect of UAS, the implications are required to be ascertained accordingly.

Maintenance and Repair of UAS

- Another emerging issue is what would be the rate applicable on the activity of repair/ maintenance of the UAS carried out in India?[8]

- Government had prescribed a reduced rate of GST of 5% for maintenance and repair of aircrafts[9] and the residuary rate for maintenance and repair services is 18%.[10]

- It needs to be examined whether drones can also be termed as an 'aircraft' and if the maintenance service providers of drones can pay GST at the rate of 5% for the purpose of Rate Notification. However, it may not be the intention of the legislature to cover "drones" as an "aircraft" and hence, the reduced rate of tax is not applicable.

- In the event, the registered person located in India obtains the services of repair from an MRO located outside India, there may also be an issue of double taxation i.e., payment of GST on reverse charge and payment of customs duty at the applicable rate.[11]

"Another emerging issue is what would be the rate applicable on the activity of repair/ maintenance of the UAS carried out in India?

Requirement to generate e-way bill

- Drones are the next-gen mode of conveyance for transporting goods. Usage of drones for emergency delivery of medicines, delivery by E-commerce operators (ECOs), delivery of small tools/moulds/finished products between job worker-manufacturer would become a regular mode of delivery of goods in the near future.

- Rule 138 of the CGST Rules provides that every registered person who causes movement of goods is required to generate the e-way bill based on the value of the consignment and subject to other conditions under the Rules for such movement of goods. The CGST Rules remain silent with respect to transport of goods by way of drones/unmanned aircrafts.

- It needs to be examined whether the delivery of goods by drones can be termed as transport by air. In such a case, the E-way Bill requirements applicable for transport of goods by air would apply. Since, drone is an unmanned aircraft, the question as to who is the person in-charge of the conveyance, also would arise.

6 Sl No. 5 (f) of Schedule II of the CGST Act states that transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration shall be treated as supply of services.

7 Sl, No. 15(ii) of Notification No. 12/2017-CT(Rate) dated 28.06.2017

8 -The UAS Rules provides for an authorised maintenance centre which refers to a person who is authorised by the authorised unmanned aircraft system manufacturer or Importer for maintenance of unmanned aircraft system as per the provisions of the manufacturer's maintenance manual.

9 S,No. 25(ia) and (ib) of Notification No. 12/2017-CT(Rate) dated 28.06.2017

10 S,No. 25(ii) of Notification No. 12/2017-CT(Rate) dated 28.06.2017

11 Place of supply in case of maintenance, repair or overhaul service in respect of aircrafts and its parts, is deemed to be the location of the recipient in terms of Sl. No.3 of Notification No.4/2019-IT(Rate) dated 30.09.2019.

Classification of Drones

- While we were all aware that, the import of Unmanned Aircraft System (UAS)/Unmanned Aerial Vehicle (UAVs)/Remotely Piloted Aircraft (RPAs)/drones is 'Restricted', and it requires prior clearance of the Directorate General of Civil Aviation (DGCA) and an import license[12]. This is explicitly provided now in the UAS Rules.[13] The question which remains is what would be the classification/HSN code of drones/UAS.

- The owners/operators/manufacturers/traders should remember that the drone which is an unmanned aircraft for the purpose of UAS Rules, need not necessarily be an unmanned aircraft for the purposes of GST Law. The classification[14] determines the rate of the tax to be paid and hence a decisive factor for the persons dealing in the supply of drones.

- UAS Rules classifies the UAS based on their sizes and these drones/UAS can be used for various purposes including but not limited to aerial photography, aerial mapping, inspection, agriculture, security, surveillance, town and country planning, aerial delivery, etc., Based on their usage and specifications, classification of a drone under the GST Law and the Customs Law, has to be determined.

- For instance, a drone/unmanned aircraft with an integrated camera (quadrocopter) may merit classification under the following competing headings,

  - CTH 8525 as Closed-circuit television (CCTV), transmission apparatus for radio-broadcasting or television, whether or not incorporating reception apparatus or sound recording or reproducing apparatus; television cameras, digital cameras and video camera recorders other than two-way radio (Walkie talkie) used by defense, police and paramilitary forces etc.
  - CTH 8802 as Other aircraft (for example, helicopters, aeroplanes), other than those

12 *Policy Conditions Note 2 of Chapter 88, ITC HS*
13 *Rule 10(7) of the UAS Rules, 2021*
14 *Explanation (iv) of Notification No. 01/2017-CT(Rate) dated 28.06.2017 states that the rules for the interpretation of the First Schedule to the Customs Tariff Act, 1975, including the Section and Chapter Notes and the General Explanatory Notes of the First Schedule shall, so far as may be, apply to the interpretation of Notification No. 01/2017-CT(Rate) dated 28.06.2017.*

for personal use or as aircrafts used for personal use.
- CTH 9305 as Electronic Toys like tricycles, scooters, pedal cars etc. (including parts and accessories thereof).

The reading of the entries gives rise to the following questions,

- Whether drones can be classified as digital cameras?
- Whether drones qualify as other aircrafts similar to helicopter?
- Whether usage of drones for non-commercial purpose, qualify as aircrafts for personal use?

As on date, the Customs Tariff, does not provide for a definition of unmanned aircraft. The proposed HSN 2022 with effect from 1 January, 2022[15] apart from inserting specific Tariff Items for unmanned aircraft, has inserted the following Note under Chapter 88:

"For the purposes of this Chapter, the expression "unmanned aircraft" means any aircraft, other than those of heading 88.01, designed to be flown without a pilot on board. They may be designed to carry a payload or equipped with permanently integrated digital cameras or other equipment which would enable them to perform utilitarian functions during their flight. The expression "unmanned aircraft", however, does not cover flying toys, designed solely for amusement purposes (heading 95.03)."

As on date, the Customs Tariff, does not provide for a definition of unmanned aircraft.

The said note seems to address the issues of classification surrounding drones to an extent.

Conclusion

To keep their drones flying, and ensure the transactions are tax efficient from the perspective of GST Law, the stakeholders venturing into this space should undertake a detailed examination of the business models, implications on the repair services sought to be availed for drones and also classification of the said drones. Insofar as the rate of tax on repair services is concerned, it is urged that the CBIC issue a clarification.

15 *Fourth Schedule, Section 104(iii) of the Finance Act, 2021.*

ABOUT THE AUTHOR

Author: **Lakshmi Ratna Kancherla**
Designation: *Joint Partner*

Lakshmi Ratna is an advocate registered with the Bar Council of Maharashtra and Goa. Lakshmi Ratna is a joint partner at Lakshmikumaran and Sridharan. She is experienced in the areas of GST Law and erstwhile Indirect Tax Laws with over 10 years of experience in divergent sectors. Her work experience as part of the consulting division encompasses advising on issues under GST Law and erstwhile laws, issues on transition, health checks, handling clients on retainership basis by providing support on day-to-day basis, handholding for DGGI investigations, etc., for companies who are e-commerce operators, real estate developers, banking companies, life insurance, advertising and print media, online gaming, PSUs, OEMs, traders and manufacturers. She is also engaged in advising units which are EOUs/STPIs and SEZs.

Author: **Mallows Priscilla P**
Designation: *Associate*

Mallows Priscilla P is a 2020 graduate from School of law, Christ University. She is an advocate, registered with the Bar Council of Tamil Nadu. She is an Associate in the Consulting Division, Indirect Tax at Lakshmikumaran and Sridharan. She helps the team in advising the clients on the implications under the GST Law on various business transactions. She has a keen interest in tax laws and she is also pursuing the Company Secretary course. She writes research based articles which are published on various online portals.

THE EVOLUTION OF Wealth Management IN INDIA AND THE MIDDLE EAST

Adaptation is just as important, as is the continual process of consistent revision, to ensure that what stood fast and relevant years ago, still holds fast today and shall do so in years to come…

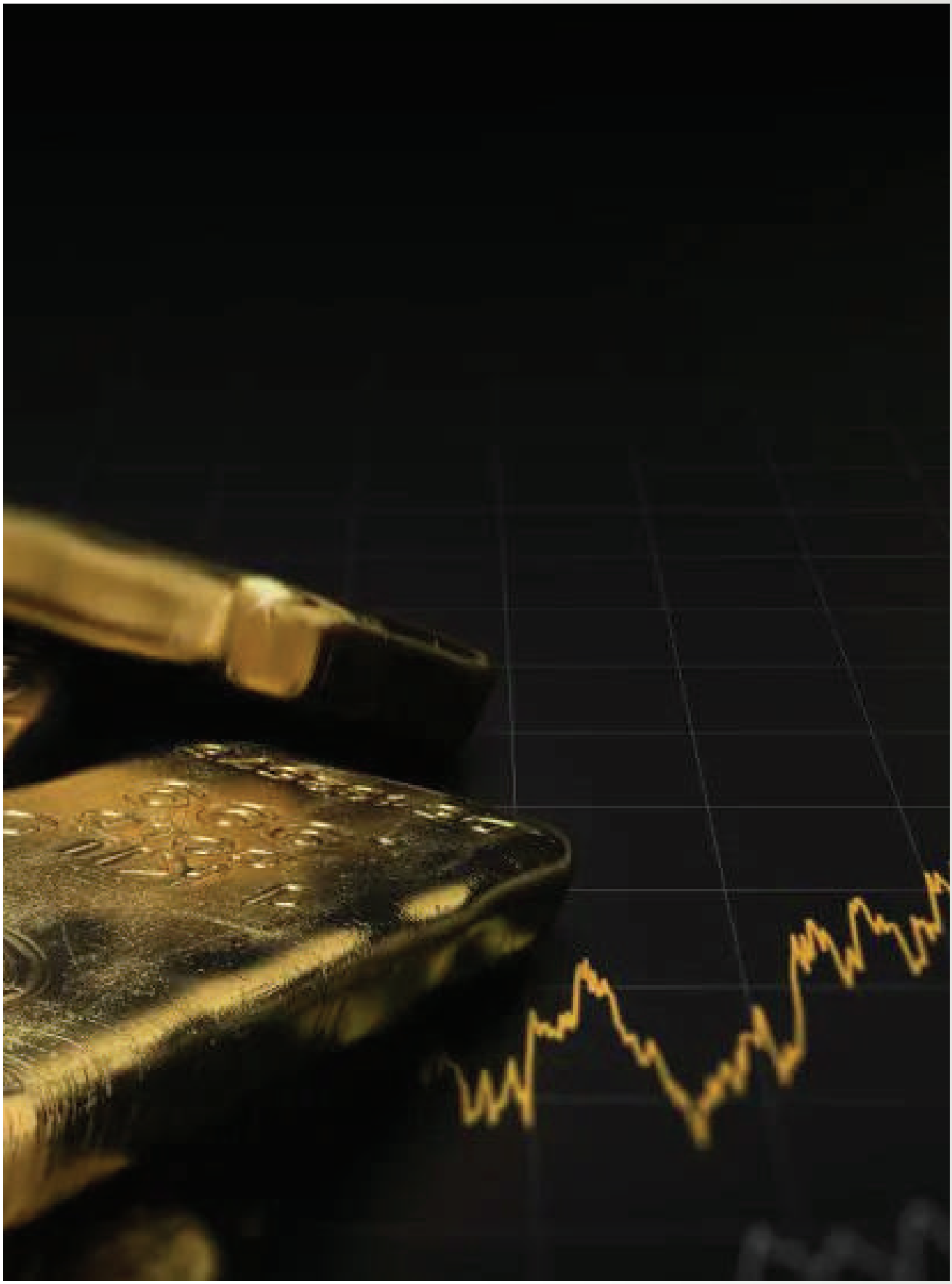
Darwin once said, "It is not the strongest of the species that survives, nor the most intelligent, but the one most responsive to change". The world as we knew it, has changed! We have not only witnessed the evolution of a new world for the internationally mobile private client, but also the evolution of the wealth management industry in India and the Middle East.

A new world for the internationally mobile private client?

The pandemic has affected the entire industry. Demands placed upon private client specialists have been compounded by clients who no longer remain entrenched in a particular region. Clients have been forced to mobilize, whether in the search for a better quality of life, (driven by access to better healthcare and education), business diversification and unavoidable restructuring, or the re-domiciliation of existing companies.

Consequently, advisors have had to change the way in which they traditionally advised clients; the ability to advise on cross-border issues when helping multi-generational families establish global structures in conjunction with bespoke codes of governance, is crucial to the success of the continual and sustainable evolution of that family. However dispensed, advise needs to be proactive so as to ensure that assets remain protected and wealth remains accessible, regardless of where a client may be. This is of course easier said, than done!

Mobility triggers a host of issues to consider: from additional taxation, interaction with trustees when seeking to modify existing trust



Sunita Singh-Dalal
Of Counsel
STEPHENSON HARWOOD

arrangements because of unforeseen situations, and ongoing management and administration of offshore trusts, to benefits of tax treaties, regulatory compliance, application of home laws, economic substance requirements, and overhauling existing structures that are no longer efficient, relevant or even compliant!

Wealth management solutions in the Middle East and particularly the UAE, (now ranked the 6th IFC) has remained buoyant and open for business, and most importantly has adapted to the needs of the internationally mobile client.

The UAE has encouraged the migration of wealth and family business to the region, as it offers long-term wealth preservation solutions, and unprecedented incentives such as UAE citizenship, golden visas and reduced administrative costs for businesses.

In 2020 we saw a flurry of new legislation introduced, both in a bid to meet international IFC standards and CRS and FATCA regulations, and to help the global businesses and families who entrusted their wealth to the UAE economy.
There has been an obvious shift in priorities within regional families: the preservation and protection of wealth has superseded the actual creation of wealth. Clients are appreciating the importance of ring-fencing ancestral wealth and personal assets from core business assets, and of segregating the ownership and management of assets. Existing structures have been stress-tested to their limits and liquidity still remains crucial.

Family Offices and Foundations in the ADGM and DIFC

Family offices are being established at a record rate. While structures are implemented to ringfence ownership of assets, family offices enable a family to continue to manage the assets. Some prefer to have regulated offices, such as that offered by the DIFC, whereas others prefer the unregulated option offered by the ADGM. Both centers provide cost-effective, common law succession planning options, as well as access to their ecosystem of global investors, funds, FinTech platforms, innovation hubs and excellent infrastructure.

The Foundation structure was first introduced in the UAE in 2018. The figures, despite the pandemic, are remarkable: as at 1 May 2021, there were 270 registered Foundations. The versatility of the foundation structure, coupled with robust firewall provisions, has proven that there are cross-border wealth management solutions available to all clients regardless of their physical location.

The figures indicate a consolidation of wealth, and that formal succession planning, coupled with carefully crafted family governance provisions, is becoming the new norm.

Investment Migration and the Indian Exodus

The plethora of wealth reports and statistics tell us that change is afoot. Clients are relocating to new regions and are considering alternative or additional citizenships in a bid to allow greater global mobility and freedom, investment preferences have changed, and philanthropic and ESG investments are increasingly prevalent.

Investment migration options in Europe and the Caribbean are frequently in the spotlight; a prudent client should always seek independent

professional advise and carry out adequate due diligence before signing up, as they would for any investment opportunity, as well as to ensure that they are not exposed to additional taxation.

As on 31 December 2020, 475 notices were issued by the Indian tax authorities under the remit of the Black Money Act, in relation to undisclosed foreign assets and income owned by Indian tax residents. This has caused tremendous disruption in the Indian business community, which has been further compounded by the Indian Finance Bill 2021's clarification of who is "liable to tax," which has possibly been the last straw for many wealthy Indian citizens, forcing them to leave the country, looking elsewhere for alternative citizenship including via investment migration schemes.

Despite being a significant victim of the pandemic, India's economy will bounce back, but like most jurisdictions the question will be how the government funds the associated costs. Wealth tax is frequently offered as a route to raising finances, and the well-advised client is already considering this possibility when planning for the future.

Wills, Succession Planning and Family Governance

As the composition of families and asset portfolios have changed, so too must the tools of succession planning. Traditionally, a will was perhaps a viable succession plan, as it ensured the smooth transfer of ownership, in particular of static assets such as immoveable property.

However, the needs of the modern business family are more complex. Issues such as business continuity and the transfer of ownership of operational assets need to be carefully considered. Probate can be cumbersome and prolonged, as testamentary wishes are open to challenges by family members. This can be disastrous when operational business assets are caught up in a probate dispute, as families deeply embroiled in protracted litigation rarely realize this until it is too late. Matters are further complicated by cross-border conflicts where Wills are executed in one jurisdiction and assets are situated in another.

Historic forced heirship provisions are no longer viable and can be prohibitive for the modern Indian business family. A viable, robust succession plan is the result of months of intense client engagement and probing of sensitive issues and family dynamics, to create a solution which meets the family's requirements.

The definition of what constitutes a "Family" remains fluid and the composition of each family is unique, which in turn requires careful consideration and ongoing interaction between advisors and all family members. This ensures that the final plan is indeed viable, robust, harmonious and sustainable for every member of that family.

Regardless of how codes are contemplated or enshrined, it is the professional advisors who must interpret them to meet the needs of each individual family that they guide and advise. Adaptation is just as important, as is the continual process of consistent revision, to ensure that what stood fast and relevant years ago, still holds fast today and shall do so in years to come. This is the essence of evolution and survival, for both clients and the wealth management industry which advises them.

ABOUT THE AUTHOR

Author: **Sunita Singh-Dalal**
Designation: *Of Counsel*

Sunita leads Stephenson Harwood's Middle East private wealth practice, where the team focuses on assisting clients in the Middle East, Africa and SouthWest Asia on cross-border private client, corporate, commercial and dispute resolution issues. As a STEP (Africa and Arabia) active member of the private wealth community, Sunita assists clients and advisors with topical matters in the UAE and GCC such as Succession Planning, Wealth Management as well as the implementation of Family Codes of Governance and Family Constitutions. Sunita is widely regarded as a leading authority within the private wealth community, which is reflected through her being recognized by Chambers & Partners High Net Worth Guide 2020 and 2021 as a ranked individual within the UAE.

THE CONSUMER PROTECTION (E-COMMERCE) RULES, 2020

AN ANALYSIS OF RELATED-PARTY PROVISIONS

A look at the provisions pertaining to "related parties" and "associated enterprises" in the Rules which are arguably the most contentious among the provisions of the Rules

As the e-commerce market booms and grows, the regulations governing e-commerce become particularly relevant. Apart from the draft e-commerce policy issued by the government, the Ministry of Consumer Affairs has now notified its draft amendments to the Consumer Protection (E-Commerce) Rules, 2020 ("Rules") and has sought comments from all stakeholders on the same.

This article analyzes the provisions pertaining to "related parties" and "associated enterprises" in the Rules which are arguably the most contentious among the provisions of the Rules.

An "e-commerce entity" is defined[1] as any person who owns, operates or manages digital or electronic facility or platform for electronic commerce, including any entity engaged by such person for the purpose of fulfillment of orders placed by a user on its platform and any "related party" as defined under Section 2(76) of the Companies Act, 2013 ("Companies Act"), but does not include a seller offering goods or services for sale on a marketplace e-commerce entity.

The proposed Rules[2] provide that every marketplace e-commerce entity is required to ensure the following:

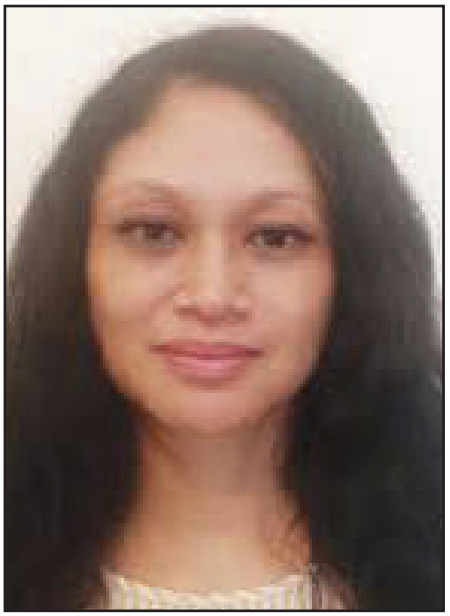
(a) that it does not use any information collected through its platform for the unfair advantage of its related parties and associated enterprises.
b) that none of its related parties and associated enterprises are enlisted as sellers for sale to consumers directly.
(c) that nothing is done by related parties or associated enterprises which the e-commerce entity cannot do itself.

The definition of "related parties":

Under the Companies Act, "related party" with reference to a company is defined as:
(i) a director or his relative; (ii) key managerial personnel or his their relatives; (iii) a firm, in which a director, manager or his relative is a partner; (iv)

1 Rule 3(b)
2 Rule 6.

Mini Raman
Partner



Angelina Talukdar
Senior Associate

LexOrbis INTELLECTUAL PROPERTY ATTORNEYS

a private company in which a director or manager [or his relative] is a member or director; (v) a public company in which a director or manager is a director [and holds] along with his relatives, more than two per cent of its paid-up share capital; (vi) anybody corporate whose Board of Directors, managing director or manager is accustomed to act in accordance with the advise. directions or instructions of a director or manager; (vii) any person on whose advise, directions or instructions a director or manager is accustomed to act; (viii) anybody corporate which is- (A) a holding, subsidiary or an associate company of such company; (B) a subsidiary of a holding company to which it is also a subsidiary; or(C) an investing company or the venturer of the company; ("the investing company or the venturer of a company" means a body corporate whose investment in the company would result in the company becoming an associate company of the body corporate); (ix) such other person as may be prescribed.

Definition of "associated enterprises":

The Rules[3] provide that two enterprises shall be "associates enterprise" if – (a) enterprises are related to each other through a common chain of directors or managing partners; (b) enterprises are related to each other through a common chain of shareholders, where such shareholders hold not less than 5 per cent of the shareholding in the related enterprises; (c) enterprises having 10 per cent or more common ultimate beneficial ownership; (d) where one enterprise can exercise a right to veto any decision, appoint one or more director(s) or in any other manner influence other entity's decision-making on any matter either through its shareholding or through an agreement including a shareholders' agreement; (e) where one enterprise holds, directly or indirectly, shares carrying the voting power in the related entities; (f) where any person or enterprise holds, directly or indirectly, shares carrying the voting power in the related entities; (g) there exists between the enterprises, any relationship of mutual interest, as may be prescribed.

Analysis:

(i) The proposed definition of "e-commerce entity" includes "any person who owns, operates or manages digital or electronic

3 Explanation (ii) to Rule 6

The objective of the Rules appears to be to rein in e-commerce entities that allegedly use related party structures to arguably circumvent prevailing FDI regulations.

facility or platform for electronic commerce". Thus, an e-commerce entity includes not only platforms selling goods such as Amazon and Flipkart but also includes other platforms providing online services such as food delivery, travel booking, on-demand home services, etc. Consequently, the proposed Rules would apply to all entities selling online goods or providing online services.

(ii) Additionally, the inclusion of "related party" in the definition of e-commerce entity is so broad that the Rules would apply to the logistics entities also, who merely provide services to the e-commerce entitiesto fulfill the orders placed by a user of the platform.

(iii) Further, the Rules also provide a wide definition of the term "associated enterprises". Accordingly, once the Rules come into effect, the e-commerce entity, its related parties and the marketplace associated entities will have to ensure compliance with the cumbersome obligations provided under the Rules. The compliances stipulated in the Rules are onerous and the e-commerce entities that violate these Rules would be liable for consequences provided under the Consumer Protection Act, 2019.

(iv) There are multiple sets of regulations governing the e-commerce sector. Firstly, there is the FDI Policy, then the Draft National e-commerce Policy and now the Rules. There seems to be an overlap of all these regulations which has resulted in a considerable amount of regulatory uncertainty.

The objective of the Rules appears to be to rein in e-commerce entities that allegedly use related party structures to arguably circumvent prevailing FDI regulations. However, the Rules are so ambiguous and cumbersome, that they may lead to over-regulation and uncertainty of regulations of a sector that has tremendous potential both in terms of business and in terms of employment generation.

ABOUT THE AUTHOR

Author: **Mini Raman**
Designation: *Partner*

Mini Raman is a corporate and transaction lawyer with 22 years of experience in M&A, private equity, and venture capital transactions and in general corporate and commercial law. She has represented both investors and the promoters in different instances. She has also represented clients in different industrial sectors such as e-commerce, IT, facilities services, telecom, hospitals, retail etc. She regularly provides expert advise on setting up of businesses and investing into India. She has advised on various funds and companies regularly on complex issues in Indian corporate, commercial and transaction law. Mini holds a bachelor of law degree (LLB) from the University of Pune and a master's degree in law (LLM) from the University of London. She is a member of the Bar Council of Maharashtra & Goa. Mini is partner with LexOrbis.

Author: **Angelina Talukdar**
Designation: *Senior Associate*

Angelina Talukdar has 4 years of practice mainly in the areas of general corporate and commercial laws. She has assisted various clients in different sectors such as e-commerce, IT facilities services, hospitals, pharmaceutical companies etc. on their early stage investment, employment agreements, non-compete, confidentiality, intellectual property licensing agreements, advertising agreements and privacy policy. She has developed considerable expertise in the areas of privacy and commercial contract laws. Angelina graduated from National Law School of India University, Bangalore and is a member of the Bar Council of Delhi.

SHAPING UP TRADEMARK LAWS
A Good Sign?

Going forward, businesses should foremost consider whether the shape that they intend to use or register falls within the absolute grounds of refusal

On 27 December 2019, Malaysians embraced the country's new Trademarks Act 2019 ("the Act" or the "2019 Act"). Aside from being hailed as the Act that sets in motion the nation's acceptance of the Madrid Protocol, the Act gives an express nod to unconventional marks, a marked departure no doubt from the repealed Trade Marks Act 1976 ("the repealed Act").

The definition of trademarkable marks under the repealed Act for example did not expressly provide for the registration of shapes. Over these past many years, the position adopted by the Registry towards shapes as registrable trademarks had not been consistent. There were instances when shapes were successfully registered as trademarks; whilst others were rejected plainly on the basis of their being shapes. From the Registry's point of view, such a position is understandable. Trademarks in many respects are deemed as a means for businesses to perpetuate their usage monopoly in the course of business, to the exclusion of all others. For as long as they are diligently renewed every 10 years, and barring any challenges by aggrieved parties in Courts, these trademarks may be seen as one of permanence (and thus an asset) for the business. The arguments of the skeptics include one where shapes, especially the ones that encapsulate the entire product of a particular business, are hardly perceived by consumers as source identifiers and cannot thus be viewed as trademarks applied to products but rather the products themselves. Because of the practically perpetual monopoly that a registered trademark proprietor could enjoy, skeptics are concerned, rightly, that protection of shapes as trademarks could be used as the back door entry to gain perpetual protection for shapes which rightly fall under other ambits of IP protection such as patents, copyright or registered designs with limited years of exclusivity. Further, shapes which are intended to prevent competitors from offering their products that incorporate similar technical solutions or functional characteristics should not be allowed registration. It is thought that the better avenue of addressing the latter is perhaps, via patent protection regime which is governed by its own policy consideration that led to the setting of a certain standard for protectible inventive functional rights. In addition, shapes which are purely aesthetic in nature are viewed with caution vis-à-vis their registrability as trademarks as it is thought that the same ought to be left for registered design protection regimes to regulate.

Since the coming into force of the 2019 Act, no less than 100 trademark applications had been filed with the Registry to register shapes. With the new introduction of trademarkable signs under the new Act, many had been optimistic about the future treatment of this unconventional sign. The arguments on the converse side from the skeptics is that, the express recognition given to shapes by the Act signifies a timely cognizance of the law trying to stay relevant and attuned with business realities. Gone were the days where businesses were strictly reliant on word marks or logos or two-dimensional devices as their source identifiers. In the recent past, especially with globalization that drives greater competition on

Indran Shanmuganathan
Partner

Michelle Loi Choi Yoke
Partner

Shearn Delamore &co.

a general basis, businesses have tried out various creative means of staying at the forefront or relevant in their respective industries. That said, not all businesses are reliant on shapes as their source identifiers. Car industries, for example, could well be said to rely on shapes as a means of gaining consumer attention. In the case of DaimlerChrysler, the Court had taken into account the fact it was common to distinguish such goods not only by word marks, but also by other means to enable the public to identify the goods visually. The same may not be the case for other industries, such as, food.

Yet the elephant in the room is, are all shapes open for "grabs" to businesses? Whilst the Act in many respects appears promising, the law in general seems to strike the right balance as to the extent of protection given to this type of unconventional marks. Under section 23(3) of the Act for example, the Registrar shall refuse to register a sign as a trademark if a sign consists exclusively of:

(a) the shape which results from the nature of the goods themselves;

(b) the shape of goods which is necessary to obtain a technical result; or

(c) the shape which gives substantial value to the goods.

These grounds are absolute grounds for refusal of registration, regardless of the product's ability in meeting the distinctiveness threshold under other provisions of the Act. This would mean that any shape that falls within any of these grounds would be denied trademark registration without any consideration being given to the extent of use for instance. Even if allowed, such registration may be declared invalid upon the application by an aggrieved person. Upon such declaration, the registration shall to that extent be deemed never to have been made although it would not affect transactions past and closed.

The underlying rationale for section 23 of the Act is largely the voice of the skeptics earlier discussed. To-date, the local Court's interpretation of section 23 of the Act is very much awaited. In the absence of local case laws, guidance could be had from how courts in other jurisdictions have interpreted these parallel provisions. Across the Causeway

> **The express recognition given to shapes by the Act signifies a timely cognizance of the law trying to stay relevant and attuned with business realities**

in Singapore, the parallel section has been up for robust interpretation by the court, the latest being the Kit Kat case.

How do we move forward?

Businesses should foremost consider whether the shape that they intend to use or register falls within the absolute grounds of refusal. As Jacob LJ had summarized most succinctly in the Bongrain case, it would appear that the more fanciful a shape is, the higher the shape stands of being perceived as one that connotes some source identification. Ultimately, consumer perception does play a role in the determination of the registrability of a shape as well. Overall, it is the authors' views that the preparedness by Act in recognizing shapes as trademarks, robust arguments notwithstanding, is a step forward and a sign of better times ahead.

ABOUT THE AUTHOR

Author: **Indran Shanmuganathan**
Designation: *Partner*

Indran is a Partner in the Intellectual Property & Technology Department at Messrs Shearn Delamore & Co. His practice spans over two decades, largely involving various spectrums of seasoned IP litigation such as Patent, Trademark, Copyright, Domain Name disputes and Industrial Design cases where some of his litigated cases have provided reference or precedent value. He has also advised major industry players on IP strategies and litigated on IP issues with clients from diverse industries. Indran regularly appears as lead counsel in complex and novel cases or appeals which encompass cutting-edge IP issues in Malaysia's apex court.

Author: **Michelle Loi Choi Yoke**
Designation: *Partner*

Michelle's practice is both contentious and non-contentious. Her IP litigation experience covers all spectrums of IP, including patent, trade mark, copyright, and design infringements, passing-off cases, geographical indication related cases, and breach of confidential information. She also advises on licensing and technology transfer agreements, computer and software agreements, domain name disputes, franchising, gaming and food regulation, Personal Data Protection Act, and trade mark prosecution work including opposition procedures.

accenture

PRESENTS

LEGAL ERA WOMEN IN LAW EXCELLENCE AWARDS 2021

"Recognizing Leading Women Lawyers & Corporate Counsel 2021"

Celebrating the Spirit of Women at India's Only Awards Event Dedicated to Appreciating Women Lawyers

26th June 2021 marked a remarkable moment in the Indian legal industry - **the flawless conduct of India's only awards event dedicated to recognizing and rewarding women lawyers.** As the 3rd Edition of the Annual Legal Era Women in Law Excellence Awards 2021 unfolded, the who's who of the legal industry, the business world, and the government was witness to **a stunning demonstration of the spirit of women lawyers.**

A distinguished Jury chose the Star Women Lawyers of the Year. Open to self-nomination and peer-nomination with a minimum experience of 12 years, **the Jury saw promising nominations from Corporate Counsel and Managing Partners with 25 years' experience to younger Corporate Counsel with 15 years' experience** handling challenging global and pan-India roles. Legal Era set yet another example for best practices by casting a spotlight on their extraordinary work.

Chief Guest

JUSTICE PRATIBHA SINGH

Judge, Delhi High Court

"The atmosphere is competitive, the clientele is challenging, and the competition is cut throat. You can't make excuses and the buck stops at you. If you're sacrificing small pleasures, it is for yourself and no one else. You cannot seek sympathy for your families' or children's situation. State it as a matter of fact and go on with life. But all this makes you stronger and more resilient. And when children see their mothers doing so well, they feel proud of you."

Guest of Honor

MADHAVI DIWAN

Additional Solicitor General of India

"It is really encouraging to see the awardees who had risen above challenges in a tumultuous field. You should not have to choose between career or family. All of these are wonderful things meant to be enjoyed because only if we're happy people will we be able to perform. For example, Maternity Benefits Act and sexual harassment laws etc. are becoming counter-productive and are being used as disincentive for women lawyers. To keep them out of positions and chambers. We must not allow that. These are meant to be empowering and enabling legislations."

The Awards evening kickstarted with a fiery opening address by **Aakriti Raizada,** Founder, Legal Era-Legal Media Group, who said, "Don't we all agree that the more competent women we recognize and reward, the more we will pave the way for our fellow women colleagues to rise." **Rajeev Chopra,** Managing Director – Legal at Accenture in India and Head of Legal for Accenture Global Delivery Centers highlighted, "At Accenture, we believe that equality is a powerful multiplier of innovation. We also recognize that equality in the true sense can only be achieved with clear goals, leadership alignment and tangible action."

The most respected **Chief Guest Justice Pratibha M. Singh, Judge,** Delhi High Court made pertinent recommendations, "General awareness, competence, and hard work beat everything. Specialize as it helps in earning name quickly. And never ask for sympathy from society." **Dr. Lalit Bhasin,** President, Society of Indian Law Firms expressed, "I'm so pleased to see so many women as GCs. In law firms too, women are doing great work. These awards are a recognition of each awardee's collective work. So, the task for the jury was very difficult." **Pallavi Shroff,** Managing Partner, Shardul Amarchand Mangaldas & Co. held the audience spellbound as her observations resonated with many. **Madhavi Divan,** the Additional Solicitor General of India emphasized the need to find out-of-the-box solutions to deal with wrong attitudes."

RAJEEV CHOPRA

Managing Director, Legal, Accenture

"At Accenture, we believe that equality is a powerful multiplier of innovation. We also recognize that equality in the true sense can only be achieved with clear goals, leadership alignment and tangible action."

The Awards Presentation Ceremony captured awardees in alphabetical order. Each of them wholeheartedly embraced their moment of privilege and honor.

The event also stirred conversations with a **Panel Discussion on "Why does Inclusion & Diversity (I&D) matter and how do we actively weave Inclusion & Diversity (I&D) into our Organization?"** Moderated by **Vasudha Sharma,** Vice President Legal, Accenture in India, the panelists were **Manjaree Chowdhary,** ED and GC, Maruti Suzuki India Limited; **Neera Sharma,** CEO/CLO, Sistema Smart Technologies Limited; **Shukla Wassan,** Independent Director and Legal/Corporate Consultant, Conflict Resolution, Arbitration, Mediation; **and Neha Misra Gautam,** Senior Legal Counsel, Accenture.

DR. LALIT BHASIN

President, Society of Indian Law Firms

"I'm so pleased to see so many women as GCs. In law firms too, women are doing great work. These awards are a recognition of each awardee's collective work. So, the task for the jury was very difficult."

PALLAVI SHROFF

Managing Partner,
Shardul Amarchand Mangaldas & Co.

"There was a time when I used to be asked in Court, "Are you going to argue?" I took that smirk as a challenge to show to the judge that I will argue and got an order. You have to have a lot of tenacity and determination."

Women in Law Excellence Awards has transcended from being an awards event to becoming a platform of repute to discover talented trailblazing women and share powerful stories!

STAR WOMEN LAWYERS OF THE YEAR 2021

Aastha Abhya

General Counsel, M2P Fintech

Aastha Abhya is the General Counsel at M2P Fintech. She is responsible for advisory, documentation, litigation, and transaction support to products and services of YAP, India, GCC, and APAC regions. She advises executive, senior management, and board on legal rights, and new and existing laws; provides interpretations and recommendations to management and other staff; plans and implements internal policies and procedures; and handles statutory and regulatory requirements, such as RBI licensing forms. She also anticipates and identifies legal issues and provides counseling to officers of the institution to develop legal strategies and solutions, often in situations of political, public relations, or financial risk or significance, and with limited time for assessing alternatives. She manages investors and the external law firm concerning the organization's series funding. A Gujarat National Law University alumnus, Aastha previously worked with MasterCard India Services Private Limited and MasterCard Asia Pacific Pte. Ltd. as the Legal Consultant to Legal Counsel. She was also the Privacy Counsel for APAC where she was responsible for privacy and data protection lawyer for MasterCard APAC. She was also the Legal Commercial Counsel for India, Bangladesh, Nepal, and Sri Lanka. MasterCard Exceptional rewarded her with the Sales Performance Award 2019. In her earlier roles, Aastha had a two-year stint with ICICI Bank Limited as Senior Legal Manager, worked as an Independent Corporate Practitioner, and also worked with DSM India Private Limited, Moser Baer Projects Private Limited, and Singh and Associates.

> "This award is dedicated to **every woman** who has risen to challenges and claimed this space that is truly their own."

Anjali Ghosh

Head Legal, AWS INDIA & SOUTH ASIA PS, Amazon Web Services

Anjali Ghosh is India & South Asia Legal Lead for Amazon Web Services, Public Sector. She is responsible for providing legal advise to AWS Senior Leadership, strategizing to drive Amazon's worldwide expansion efforts by analyzing and assessing international procurement laws, directives, rules, and data privacy regulations, and other potential barriers to entry in India & South Asia. She negotiates with top representatives of Central Government Ministries and Nodal Agencies to alleviate concerns around data access, cyber laws, computing policies, and advise on safeguards put into place by Amazon to protect state and citizens data. She provides subject matter expertise and legal analysis for data protection and privacy-related matters across the India and South Asia region. Anjali's key expertise lies in next-gen Technology Laws, including, IT Laws, Data Privacy Laws across EMEA & APAC, Cloud Computing, Cyber Laws, Blockchain, Machine Learning & Cryptocurrency. Previously, Anjali was part of American Express Legal Leadership, heading AMEX APAC Technology Legal Team, overseeing domestic and international matters. Anjali pursued law in the United Kingdom and worked for several years in a prestigious law firm in London before returning home to a stellar career. Some of her achievements include advising on India's first Cloud Policy Framework working with Kris Gopalakrishnan. She has negotiated and led an $18Bn Consortium Deal for British Telecom. She was part of a two-member legal team, negotiating & closing the $500 Million deal between HCL & PepsiCo. She has also negotiated and closed a $100M deal between HCL & Microsoft. The Indian National Bar Association awarded Anjali, the General Counsel of the Year 2019 – Technology Sector. She is also featured amongst the top 100 Lawyers in India by the Indian Corporate Counsel Association Anthology.

Anu Monga

Partner, Anant Law

Aun Monga is a Partner at Anant Law. She has extensive experience in advising, assisting, and representing clients on diverse regulatory and policy matters and even in the Technology, Media, and Telecom space. Anu's practice focuses on Competition/Antitrust and International Trade laws and is a well-known face owing to her regular appearances before the Supreme Court of India, Delhi High Court, NCLAT, and CCI. She is among the very few lawyers to advise on 'capital dumping' and overlap of competition law and international trade laws. Anu also advises clients in the acquisition of IPRs and drafting/negotiating relevant documents. A versatile professional, she also plays an active role in business development and client relationship management. Anu has been part of some of the most high-stake matters on behavioral side including the cement cartel matter and the largest-ever penalty was imposed on 11 Cement Companies and their association. She has obtained several landmark orders including the relevant turnover judgment from the Supreme Court of India in the Excel Crop Care matter. She also has the rare distinction of being the only Indian counsel to have argued a matter before the US Department of Commerce on behalf of the Government of India and obtained a favorable order. Anu has handled IPR practice at Seth Dua & Associates. She played a key role in SAAB-Foster's tax dispute with the Government of India winning the first order by any High Court on the situs of trademark/ IPRs in a tax dispute. Previously, Anu also handled the International Trade/ WTO practice at Cyril Amarchand Mangaldas and IndusLaw. Anu was nominated at the Global Competition Review Annual Awards at Washington DC, USA for representing the Informant in Cement Cartel matter in 2013, and obtaining an order on 'relevant turnover' from COMPAT in 2014.

> "Sincere gratitude. While I make my journey forward in this profession, I thank all my fellow women professionals and seniors for **paving the way."**

Asmita Pawar

Head – Transactional Advisory & IP, Risk Assessment & Mitigation Strategy, Compliance, Tata Technologies

Asmita Pawar is Head – Automotive Transactions & IP, Tata Technologies. A skilled contract negotiator and corporate law specialist with experience in the IT/ITeS and automotive sector across North America and the Asia-Pacific, Asmita advises the senior management on various issues and legal aspects. That includes overseeing contract preparation & negotiation, management of IP portfolio, statutory compliance, employee policies & manuals, bad debt recoveries, and managing the budget for the legal function. A part of the North America Leadership Team, Asmita received a Letter of appreciation from management for outstanding performance and support and the Best Employee award. She has reduced the company's overall contract risk by 60% in the last three years by negotiating and structuring favorable terms. She has facilitated approximately $80 million in revenue by successfully negotiating services agreements and distribution agreements. She has also reduced non-compliance within the company by 40% by conducting webinars/sessions for other support functions and numerous internal audits and implemented an effective compliance tool to monitor statutory compliance. Asmita has led mergers and acquisitions, negotiated stock purchase and sale of business agreements, and ensured compliance with the terms from different departments. And she was recognized for saving 70% of the budgeted cost by managing most of the legal issues in-house and effective management of outsourcing legal consultation. Previously, Asmita has worked with KPIT Technologies Limited and law firms such as Haresh Jagtiani & Associates, M.V. Kini, and Universal Legal.

> "This is a **great encouragement and a testament** that I'm on the right path. Thank you, Legal Era!"

Armin Pardiwala

Partner, Crawford Bayley & Co.

Armin Pardiwala is a Partner at Crawford Bayley & Co. Her responsibilities include drafting contracts and agreements; conducting legal due diligence for capital market transactions and mergers and acquisitions; assisting companies in the structuring and setting up of operations in India end-to-end; and drafting and negotiating documents relating to immovable properties. Armin has advised multinational companies like Telekom Malaysia Sdn. Bhd., Royal Dutch Shell Plc., Saudi Aramco, Matsushita Electric Works, Ltd., Qatar Telecom on acquisitions of Indian companies; and advised Indian companies like Sasken Communication Technologies Limited, J B Chemicals Private Limited, and Finolex Cables Limited on acquisitions outside India. She has also advised numerous private equity funds and target companies on investment by private equity funds in Indian companies. Armin is currently advising the Government on the Privatization of BEML Limited; Privatization of HLL Limited; Privatization of Pawan Has Limited; and Privatization of PDIL. She has earlier advised the Government of India on the sale of residual shareholding held by the President of India in Tata Communications Limited to Panatone Finvest Limited. Some of her other accomplishments include advising the Government of India on the privatization of National Aluminum Company Limited and the offer for sale of its equity stake in Maruti Udyog Limited. She has advised the consortium of Royal Dutch Shell Plc. and Saudi Aramco on the acquisition of the stake of the Government of India in Hindustan Petroleum Corporation Limited. And she has assisted the Government of India in drafting the new code of conduct on disinvestment transactions. Armin has previously worked with leading international law firms such as Davis Polk and Wardwell, Linklaters, Shearman Sterling, Clifford Chance, Allen and Overy, Eversheds, ASG Law, Engelin Teh Practice LLC.

Dhwani Rao

Head Legal Counsel - IP, Digital, HR laws for South Asia Region; Head of Data Privacy for South Asia Region, Nestle India Limited

Dhwani Rao is the Head Legal Counsel handling IP, Digital legal, and HR legal matters for South Asia Region at Nestlé. She is also the Head of Data Privacy for the South Asia Region at Nestlé. Starting with Nestlé as a Regional Legal Specialist for business units in 2012, she has been supporting South Asia Region markets on diverse issues and dealing with contentious legal matters. She has also handled a variety of digital legal issues including privacy, crowdsourcing, e-commerce, cloud computing, robotics, IoT, artificial intelligence, drones, augmented and virtual reality. Business and legal teams across the Region have appreciated Dhwani for implementing anti-counterfeiting measures in the SAR Region. She has been integral in rolling out varied Employment law-related policies across the organization and ensuring compliance across all units in India. She is the legal partner to HR Function and independently handles complex legal matters including interpretation and application of regulations on personnel grievances, harassment, and conduct, and ensures strict adherence of labor compliances across all levels. Currently a member with BASCAP, CASCADE, International Technology Law Association, International Trademark Association, and Inter-Pacific Bar Association, she has been coveted with the prestigious 'Legal Era Award' conferred in 2016 under 'Rising Star' below 40 years category. Before joining Nestlé in 2012, Dhwani worked in a law firm advising domestic and international businesses.

> "I wish to echo the words, "**Behind every successful woman is a family.** So huge congratulations to women awardees and their families!"

Ekta Gupta

Partner, Shardul Amarchand Mangaldas & Co.

> It's been a pandemic year and it's not been easy for any of us. I thank Legal Era for organizing this event and **recognizing our efforts** during such times."

Ekta Gupta is an M&A and PE Partner at Shardul Amarchand Mangaldas. She has advised private equity funds, public and private companies, sovereign wealth funds, MNCs, strategic corporate clients, and Indian conglomerates on a variety of complex cross-border PE and M&A transactions. Over the last 3 years, Ekta has been consistently recognized amongst the top 12 hardworking corporate lawyers in Asia by the Merger market based on the number of deals she closed every year. In the last 6 years, she has undertaken over 60 transactions for PE and strategic corporate clients. Since becoming a partner, she has developed strong relationships with Temasek, IDFC Alternatives, Paytm, Walmart, Flipkart, and Maverick Capital for whom she has become the go-to counsel. She has formidable experience in e-commerce, retail, financial services, fin-tech and also specializes in F&B, Telecom, and Pharmaceuticals. A National Law University, Jodhpur alumnus, few of Ekta's many significant accomplishments include representing Silver Lake, KKR, General Atlantic, GIC, TPG, ADIA, and Public Investment Fund Saudi Arabia on their respective investments in Reliance Retail Ventures Limited; and representing Walmart on the acquisition of majority stake by Wal-Mart International Holdings, Inc. and Walmart Inc. in Flipkart Private Limited for an aggregate consideration of US$ 16 billion. This transaction won numerous awards including 'M&A Deal of the Year' by Asian Legal Business Awards 2019, 'Winning Deals' by Global M&A Network Atlas Awards 2019, and 'Impact deal of the Year' by Asialaw Regional Awards, 2019.

Juhi Sinha

Vice President & Deputy General Counsel (Legal), InterGlobe Enterprises

Juhi Sinha is currently the Deputy General Counsel and Vice President Legal at InterGlobe Enterprises Private Limited. She is a strategic business partner supporting the business in legal and regulatory issues. She is also responsible for directing the implementation and execution of the Code of Conduct compliance program of the Company and its business subsidiaries. Donning this role since 2019, in the last 2 years, Juhi has handled the restructuring of the InterGlobe Legal Process and management of corporate legal affairs. She led some very large and complex litigations outside India involving the business has been instrumental in winning these litigations for the company.

Juhi started her career with Lall & Sethi Advocates and then worked with a few law firms before joining InterGlobe Technologies, the IT and BPO arm of IGEPL. As the Head of Legal at IGT, Juhi's provided advisory on complex international/cross-business transactions, business expansions, key client contract negotiations, guided a major restructuring of the legal and operations department of the company, and implemented best practices and policies leading to a major overhaul. She also led some significant out-of-court settlements and arbitrations for the company. Juhi has earned a bachelor's degree in History (Hons) from Hindu College, Delhi University in 2000, and a bachelor's degree in law from the prestigious ILS Law College in Pune three years later. She completed an additional master's degree in international corporate law from the George Washington University, Washington DC in 2007.

Kanika Shah Wadhwa

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

Kanika Shah Wadhwa is the Legal Director and Senior Counsel (Head of Legal), at GlaxoSmithKline Asia Pvt. Ltd. She took over as the Head of Legal for the consumer healthcare division of GSK in the Indian Subcontinent, post the divestment of the nutritional business with Hindustan Unilever. Kanika was involved in the amalgamation of GlaxoSmithKline Consumer Healthcare Limited and Hindustan Unilever Limited and Consignment Selling Arrangement with HUL. She was responsible for obtaining anti-trust approvals for the merger. She was also required to undertake real estate transactions involving almost 200 acres spread across India. Kanika led a cross-functional team in negotiating and helping operationalize the consignment selling arrangement with HUL under which HUL partnered with GSK to distribute and sell GSK's Over-The-Counter and Oral HealthCare products. Her ability to carry the team with tenacity and calm during the most stressful times during the entire transaction has been recognized at global platforms within the GSK system. Involved in the Divestment of Nutritional Portfolio of GSK in Bangladesh, she set up the OTC and OHC business in Bangladesh. She adeptly managed to work with multiple stakeholders in different jurisdictions and time zones, during the lockdown. An enabler of digital transformation and innovation, Kanika and the legal team, formed the core part of the 'new product innovation' teams. She even led a team responsible for developing a chatbot to help clarify policy-related issues. Kanika is a part of the prestigious global cohort of emerging talent within the global legal function. She was awarded '40 Under 40 Rising Star Awards 2020' by Legal Era.

Khushnuma Khan

Founder, KK Associates

Khushnuma Khan is a seasoned arbitrator and strategic litigator. She is also a qualified Associate Chartered Arbitrator from the Chartered Institute of Arbitrators, London. Her major practice areas are Banking, Corporate Litigation, Arbitration, Mergers & Acquisitions, MSMEs, and Start-ups. Khushnuma started her career with S. Mohammedbhai & Co., Little & Co., Kanga & Co, and D.M. Harish & Co. Armed with a rich experience of acting for the sovereign, sub-national, and private international parties in international commercial and investment arbitration/litigation and other corporate advisory capacities; and significant deep experience in investor-state arbitration, infrastructure & project, banking and finance, in January 2009, Khushnuma started her own law firm M/s. K K Associates (Advocates & Solicitors). In 2014, the started her law firm in UAE in partnership with MIO International, a Dubai-based law firm. Since then, it's been upwards and onwards. Today, Khushnuma represents high net worth clients in India and UAE and is appointed by 12 Consortium Banks to handle high net-worth litigation cases in Dubai Courts. She has also represented high-profile clients on various deals, transactions, and/or arbitration. She represents several Indian and foreign corporate clients. She also represents the Indian embassy and consulate in UAE and provides legal advisory services and support on pro-bono to help the distressed Indian community. An alumnus of K.C. College, Khushnuma is a regular speaker at key industry platforms and her work has been published by Law Street, Swiss-Chinese Bar Association, UAE Banks, and Chartered Institute of Arbitrators.

"Thank you, Legal Era not only for this award but also for creating this platform for women in such a tough profession and equally fulfilling too. They **now have a voice to be recognized.**"

Maimoona Badsha

Founder, Badsha Legal

Maimoona Badsha has been the General Counsel for Apollo Hospitals Enterprise Limited and its Group Companies, pan-India,, and its Global projects/initiatives since 2008. She is responsible for all legal affairs relating to Apollo Hospitals, the largest private healthcare services provider in India. She is also the Chief legal advisor to the Chairman, Apollo Hospitals, Executive Directors, senior-level management, and stakeholders at several locations in India and globally. In the Healthcare sector, Maimoona manages company litigation portfolio, advises and oversees regulatory compliances, negotiates and drafts all commercial agreements. She also advises on the implementation of medical laws. She conducts training programs for healthcare professionals on their legal rights. In the Life sciences sector, she drafts commercial agreements; represents tissue banking & drug discovery companies; and is the Legal Advisor for 10 AARRHAPP accredited Clinical trial sites across India. Maimoona is also involved in the General Corporate & Commercial law aspects. She provides strategies & solutions to resolve cross-border and domestic legal issues through arbitration. She regularly drafts pleadings, conducts trials in courts, and has handled cases from inception to final judgment. Recognized as India's Top 100 General Counsels by Business World, Legal World's Top GC 100, 2020, Maimoona is a member of many bodies of repute. These include the High Court of Madras; The Gender Sensitization and Internal Compliance Committee-I; Bar Council of Tamil Nadu; Madras High Court Advocates and Madras Bar Association; and Honorary Member, Institutional Ethics Committee for Human Clinical Trials, Apollo Research & Innovations. Previously, she was the Director, India Operations Legalease Solutions Pvt. Ltd. from 2005 to 2008.

"Women, let's come together, and **win more awards** so that we all win together!"

Mamta Rani Jha

Senior Partner, Inttl Advocare

Mamta Jha Senior Partner & Head of Litigation at Inttl Advocare. She is a practicing lawyer with expertise in Intellectual Property. She also has considerable experience in emerging fields of Information Technology, Telecommunications, Media, and Anti-Trust laws. Her past experience in both civil and criminal litigation has equipped her with a unique approach to addressing complex issues and providing holistic solutions. Acknowledged as a leading authority in the Indian IPR scenario, Mamta often speaks her mind at various IP fora. She has authored the India Chapter of the AIPPI-Wolters-Kluwer Practitioners' Guide to Antibody Patenting. She was featured in the book "Antibody Patenting: A Practitioner's Guide to Drafting, Prosecution, and Enforcement." Recently, she was the first Indian interviewed by 'Leaderching', a platform for Leadership and Coaching. Apart from litigation, Mamta 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. A Gold Medalist in B.Sc. (Zoology), Mamta is the Chair of the INTA Oppositions and Cancellations Sub-Committee, India Representative of APAA Anti-Counterfeiting Committee, India Member of the AIPPI Biotechnology Committee, and India Leader – AIPPI Study Question on Inventorship of inventions made using AI. Mamta was recognized by World Trademark Review 2021 for Enforcement & Litigation practice area; featured in 'Hall of Fame edition 2020' by The Enterprise World Magazine; featured amongst "The 10 Most Influential Women Lawyers to Watch" by Insight Success Media; recognized amongst 2021 'Top Lawyers' from India for IP-related advise by Asia IP Magazine; recognized amongst the 'Top 15 IP Lawyers' 2020 by online legal magazine Asian Legal Business.

Meenu Chandra

President Legal, Commercial & Compliance,
HCL Technologies

Meenu heads the Legal, Commercial, and Compliance function of HCL Technologies for its operations in India, the UK & Europe, and APMEA regions. She has handled General Commercial, Regulatory Compliance, Litigation, Arbitration, Policy Advocacy in IP, Privacy, Cybersecurity with research and training experience across the USA, UK, and India in Hi-tech & ITES companies like HCL Technologies, Microsoft, and United Lex. Meenu is actively engaged in policy debates and has various publications on Data Privacy, Cybersecurity, IP and Innovation, Trade Secrets, Anti-Counterfeiting, IP, and Competition Law. She spearheaded Public policy campaigns such as FICCI CASCADE and Microsoft India's Cybersecurity Engagement Centre. Before joining HCL Tech, Meenu led the IP and Technology Law Practice of Adyopant Legal and served as Lead Consultant- Technology and Data Policy for "The Dialogue". Before this, she was Senior Attorney, Director IP, and Digital Crime Unit in the Corporate, External & Legal Affairs function of Microsoft Corporation (India) Pvt Ltd. She led the Cybersecurity Engagement Centre initiative of Microsoft India. Meenu has also served as BSA India Chair India Campaign Committee 2017 & 2018 responsible for executing cybersecurity and anti-piracy awareness campaigns across India. An avid speaker at national and international forums on policy & legal issues, Meenu is the proud recipient of the INBA Women In-House Counsel of the year – Cyberlaw 2017 and the Legal Era IP Star Women Award of the Year at the International IP Conclave & Awards 2019.

Manisha Singh

Founding & Managing Partner, LexOrbis

Manisha Singh is the Co-Founder and Partner at LexOrbis, India's premier Intellectual Property law providing end-to-end IP services and solutions starting from ideation to monetization including procurement, protection, maintenance, and enforcement of all forms of IP rights and assets and other legal services. She has been advising and handling dispute resolutions for global technology and pharmaceutical companies, public sector companies, the Council for Scientific and Industrial Research, the Government of India, the Indian Oil Corporation, the Department of Non-Banking Companies, and the Reserve Bank of India. She founded LexOrbis in 1997 to bring an international perspective to the Indian intellectual property right laws, that were in the process of being integrated with the International IP systems post-signing by India of TRIPS Agreement. She worked closely with the policy makers and judiciary to establish a level playing IP regime in India and she continues to work on critical and high-stake policy-related cases. Routinely invited to author articles and commentaries on contemporary IP issues, her work appears in Managing IP, World Intellectual Property Review, Indian Business Law Journal, IP Frontline, Marques, Mondaq, Asialaw, etc. An alumnus of Campus Law Centre, Delhi University of Delhi and LLM in Economics from Patna. Manisha is ranked amongst the top and leading lawyers in IP and dispute resolution segments of Indian legal practice and is a member of many significant IP forums and professional bodies. These include the International Trademark Association, International Association for the Protection of Intellectual Property, American Intellectual Property Law Association, Intellectual Property Owners Association, Licensing Executives Society International, European Communities Trade Mark Association, and Pharmaceuticals Trade Marks Group.

"It's a **great honor** to receive this award from Hon'ble Justice Pratibha Singh. She's inspired us so much! Thank you Aakriti."

Nandita Gera

Director – Legal, Risk Management & Compliance, India Subcontinent, DB Schenker

Nandita Gera is the Director - Legal, Risk Management & Compliance, India Subcontinent at DB Schenker. Her areas of expertise include Commercial Contracts, Corporate Governance, and Risk Management. Advising multinational corporations and Indian conglomerates across a varied spectrum of legal practice, Nandita has contributed to help businesses win in complex environments while guiding them to operate within the parameters of the law. She currently heads the legal, compliance, and risk management function for DB Schenker in India. Her responsibilities include guiding the senior management of the company on legal aspects related to the business including corporate and commercial matters; compliance matters; structuring legal documentation and commercial contracts; supporting complex transactions including JVs and M&A; litigation management to develop and implement case strategies and recover losses to the company, etc. She also ensures the company's compliance with applicable laws and internal policies, and risk management to anticipate and guard against legal risks facing the company. She has also worked with InterGlobe; Titus & Co., Advocates; Schlumberger, and PepsiCo. Nandita has graduated in Law from Symbiosis Law School, Pune.

Neha Verma

Legal Head & Company Secretary, Puniska Healthcare Pvt. Ltd.

Neha Verma is the Company Secretary and Legal Head at Puniska Healthcare Private Limited. She heads the legal and secretarial department of the Company. Her responsibilities include carrying out due diligence on behalf of the Company and coordinating amongst all departments for due diligence and M & A deals. She coordinates for patent work internally and coordinates with outside agencies like lawyers, consultants, Registrar of Companies, etc. She drafts and vets legal documents for mergers and acquisitions, rent, lease and leave and license, immovable properties purchase and sale, and bank documents. She visits Courts and Tribunals, ensures the Company's compliance with statutory obligations, and manages the Company's subsidiaries in foreign countries like the USA, Kenya, Mexico, etc., and their compliances and filings. Earlier she worked with Aculife Healthcare Private Limited as Company Secretary and Legal Head. She handled all requirements arising from the demerger of Healthcare Division of Nirma Limited and transfer of the same to the Company. She dealt with all statutory authorities, third parties and modifying all licenses, approvals, registrations, etc. Her other responsibilities included drafting documents for the transfer of product registration of the Company in foreign countries; drafting Memorandum of Understanding, Joint Venture Agreements, Share Purchase Agreement, Shareholders Agreement, and Proposal for company acquisition; drafting License and Assignment Agreement for trademark purposes; handling due diligence of a foreign company, and preparing all documents for acquisition and correspondence with the foreign joint venture partners and target company. Published widely, her work appears in the E-Magazine of Asian Legal Business, India, and the IPleader blog.

> "I dedicate this award to my father and grandfather. **I'm a third-generation lawyer** thanks to them."

Pooja Bedi

General Counsel,
Philips for the India Sub Continent

Pooja Bedi is the General Counsel at Philips for the India Sub Continent. She leads the legal and compliance function. Her core competencies include Leadership & Management, Public Policy, Corporate Law, Board Governance, Competition Law, US FCPA/Compliance Ethics Expert, IPO/ Listing, Sexual Harassment/Employee dispute resolution, Commercial Litigation/Dispute Resolution, Regulatory Policy, Captive Global Back office/ Process outsourcing, High-Value Contracts, Government Relations, APAC Region Compliances, Investigations/Forensics, Commercial Law, Mergers, Legal ops, Market Entry, Technology / Data Privacy, Union/ Labor Laws, Direct/Indirect Tax, Consumer Disputes, International Arbitration & Mediation, Government Affairs. She has worked with Argentum Law as Counsel; Juul Labs as Director – Legal; AB InBev India as Legal Compliance & Corporate Affairs Director- India/South East Asia; and Pernod Ricard as Senior Manager – Legal. While at Pernod Ricard, she advised on Seagram take over by Pernod Ricard India & FDI/RBI Compliance Consolidation of Indian entities through 6 mergers, slump sale, and business asset sale. She also worked on Land acquisition, divestment, property title clearances and successfully created a supply footprint by sub-leasing license in 7 States of India. She has handled Direct & Indirect Tax matters and litigation and led the Corporate Social Responsibility Agenda. Pooja won an International Award and was recognized for outstanding performance with a gold medal in 2013.

"It's a great honor to be in this elite list. I completely resonate that real change happens one step at a time. And I think **we're all making a difference!** So go girls!"

Pooja Sehgal Mehtani

General Counsel, Asia Service Centres & Company Secretary, ASCI, Sun Life India Service Centre Pvt. Ltd

Pooja Sehgal Mehtani is the General Counsel, Sun Life, Asia Service Centres, India and Philippines, and Company Secretary of Asia Service Centre India. She spearheads the Legal and Corporate Secretarial affairs for the organization and leads the Knowledge Services Legal Vertical within the organization, providing legal services to various geographies on technology contracts. Pooja is a core member of the India management team and various internal committees. Leading the legal strategy and working closely with the business, she is a key contributor to organizational strategy and the corporate decision-making team. At Sun Life, Pooja set up a Legal Centre of Excellence for under Knowledge Services Vertical and was responsible for Digitization and Automation of processes within the Legal and Secretarial department. Her professional journey began as a CS management intern at DCM Shriram Industries. She spent the first three years with Sanspareils Greenlands Pvt. Ltd. a leading manufacturer and exporter of cricket gear, managing their Corporate and Secretarial Affairs. She spent the next 11 years as the Legal Counsel, Company Secretary, and Ethics & Compliance officer with the French infrastructure and environmental services group, Suez. A law graduate and certified Company Secretary, Pooja has also undergone various leadership programs and an Executive Management Programme at the Department of Management Studies, IIT Delhi. Pooja was featured in the 'Trailblazers-India's finest In-house Counsels' 2017 by the Indian Corporate Counsel Association in collaboration with the Ministry of Law and Ministry of Commerce, Government of India, and also in the 'GC Powerlist -India 2018' recognizing the top 100 General Counsels in India by Legal 500.

"In these changing times, we must all strive to **move forward and learn and unlearn.**"

"**So much work has gone into making this event possible** and bringing us all together! And yes, we all have a collective responsibility to foster a supportive ecosystem and progressive mindset to enable women to excel in their workplaces."

Priya Menon

Executive Director & General Counsel, 3M India Limited

Priya Menon is the Executive Director & General Counsel at 3M Limited. She is responsible for the overall Legal & Secretarial function of 3M India. As a member of the leadership team and Invitee to the 3M India Board, she is a partner to all growth initiatives of the Company and is responsible for overseeing and advising on all key projects of the Company. She also provides a strong partnership with the Company's compliance programs to mitigate risk. In Corporate Governance, she is responsible for the relations between the Board members and stakeholders. The Subject Matter Expert in India for Employment Law, Data Privacy, Competition Law and Corporate law, Priya is also responsible for cross-collaboration with finance tax and HR team for effective day-to-day management of all activities and provides ongoing support to Real estate, Public relations, and Government affairs teams, and to Global teams on IP and Brand protection compliances. Before joining 3M Limited, she worked with WeWork India Management Private Limited as their General Counsel. She was part of the Executive leadership team. She has also worked with Nike India Pvt. Ltd. as Director Legal & Head of Office; Genpact India as Assistant Vice President & Legal Counsel; AOL Online India Private Limited as their Senior Counsel; Britannia Industries Limited as Manager – Legal; and law firms such as Poovayya & Co. and Mulla & Mulla Craigie Blunt & Caroe.

"Thank you, Legal Era for acknowledging my hard work as a lawyer. I thank my father who actually taught me the **meaning of equality.**"

Priyanka Chaudhari

Director- Intellectual Property, Litigation & Content Grievances, Netflix

Priyanka Chaudhari is the Director-Intellectual Property, Litigation & Content Grievances at Netflix. She heads the IP vertical for India and the other south Asian countries. She is responsible for production clearance of content, advising on legalities and risks involved in creation and production of controversial content, due diligence of chain of title documentation for rights acquisition deals, handling claims, enforcement actions, and title clearance and trademark-related work. When Priyanka joined Netflix in 2019, she was hired to be the 1st content lawyer in the Intellectual Property team of India with an extraordinary opportunity to launch and build a specialist IP team for Netflix India. Today, her team leads all things related to Media & Entertainment laws for Indian content creation, production and exploitation end-to-end. As a Counsel, she manages the legal affairs of the business and legal affairs team, the content and production teams, the marketing legal team, the litigation team, and the public policy team. In 2020, few copyright infringement suits were filed against Netflix for which Priyanka and her team managed to get favorable orders in their favor. Before joining Netflix, she worked with Balaji Telefilms Limited as Vice President and Senior Counsel. She has also worked with Zee Entertainment Enterprises Limited; Star India Private Limited; Bharti AXA Life Insurance Company Limited and law firms such as Deval Patel Associates, Advocates and Solicitors, and Vigil Juris, Advocates and Solicitors. She is an Alumnus of Rizvi Law College, Mumbai. Priyanka was awarded the prestigious title of "40 UNDER 40 RISING STARS-2020" for India by the Legal Era Magazine and the "BEST YOUNG ACHIEVER-INHOUSE 2019." She was mentioned in the list of "Powerful Women in IP India: 2021" by the World Intellectual Property Forum. She was also awarded under the "GENERAL COUNSEL-ENTERTAINMENT (CATEGORY) 2018" by Indian National Bar Association.

Rajeshwari Hariharan

Founder, Rajeshwari & Associates

Rajeshwari Hariharan is the Founder and Managing Partner at Rajeshwari & Associates. She handles the entire spectrum of legal matters in this field including patent, trademark, copyright, design, information technology law, plant variety, regulatory affairs, information technology, entertainment, technology transfer, and allied fields representing clients from India and all around the world, including large business houses, multinational companies, and individuals. Rajeshwari has negotiated patent licensing transactions; obtained the initial patents in India for genes and micro-organisms; won numerous patent oppositions for Indian and foreign clients; acted in the first-ever challenge to EMR (exclusive marketing rights) on behalf of NatcoPharma Limited in India; won the Basmati and Neem revocations filed by Government of India at the US Patent office, and won the first-ever compulsory license granted to an Indian company. She has won many landmark cases such as Microfibres v Samsonite on trade dress and design infringement; Novartis V MeherPharma on patent infringement concerning imatinib mesylate (Glivec); Merck V Glenmark case on patent infringement; Ikea Vs Aikya on trademark infringement; and Bayer Vs Natco on the scope of section 107A. LLB and Master's Biotechnology, Rajeshwari is a prolific IP issue writer and speaker and has been rated by Chambers and Partners and Intellectual Asset Management magazine as one of the leading patent lawyers in the country.

Roop Loomba

General Counsel, Head of Ethics, India and South Asia, Rolls-Royce

Roop Loomba is the General Counsel and Head of Ethics and Compliances India and South Asia at Rolls-Royce India Limited. She is responsible for setting up the Legal and Ethics and Compliances for the Company in India and South Asia, and setting up the Legal Processes, standardization of contracts, leading training, and negotiating high stake contracts. Roop is well-versed in Civil, Criminal & Commercial Laws, Corporate Laws, Food Laws and Constitutional Law of India, Legal Metrology Laws, Labor Laws, Sales Tax Laws, Competition Law, etc. She holds the distinction of administering legal operations across the Indian sub-continent including South Asian countries like Sri Lanka, Bangladesh, Nepal, and Bhutan. With extensive experience in drafting legal & commercial documents and appearing before courts and tribunals, she provides strategic, commercial, and pragmatic advise to the management. Her core competencies include handling cases pertaining to legal and statutory matters; attending the legal proceedings of the cases; vetting and handling Product claims and Product manuals. Her other responsibilities are interfacing with various internal departments of the company and customers to resolve issues and ensure collections and supporting the Field Collection Team. Roop was also the Managing Partner & Co-Founder, Loomba Legal Services. She has worked as Legal Retainer for Philips India Limited, Whirlpool India Limited, Louis Dreyfus Commodities, Hindustan Unilever, with Castrol India Limited as Regional In-charge of Intellectual Property Rights, and with Amarjeet and Associates as an independent legal counsel. Roop has served as Guest Faculty for the Bureau of Police Research and Development under the Ministry of Home Affairs for IT Laws and Intellectual Property Rights Laws.

"Heartiest congratulations to all the women who have overcome challenges to reach this stage today. My three cheers to all those parents who have **raised such fearless daughters!"**

"I want to specially **dedicate this award to my parents** and grandparents for giving us the best of education and never discriminating between men and women!"

Sandhya Tolat

General Counsel, Aarti Industries Ltd

Sandhya Tolat is the General Counsel at Aarti Industries Limited, a leading Indian Manufacturer in Chemicals & Pharmaceuticals. With expertise in legal drafting and execution of local and cross-border transactions, Sandhya has extensively focused on corporate organic and inorganic growth initiatives covering Legal Strategy, Contract Drafting and Negotiations, Dispute Resolution and Litigation, Regulatory and Enterprise Risk Management, and Advocacy. Her network of relationships with the legal fraternity also plays a role in accelerated resolution to issues. While Sandhya leads the legal function at AIL, she is also responsible for developing in-house legal talent; IPR, Real Estate & Brand protection & commercialization; enterprise risk management; legal compliance; business partnership; specialist advise & strategic guidance across chemical and pharma businesses on organic/inorganic growth transactions, dispute resolutions, advocacy, and regulatory compliance; and Institutionalizing, Centralizing & Digitizing legal systems and processes. Before joining AIL, Sandhya worked with Aditya Birla Group-Hindalco Industries Limited as General Manager and Corporate Legal Vertical Head. She led the legal setup of the first-ever start-up and new business venture of Hindalco namely "Eternia". An alumnus of Government Law College (GLC), Sandhya has received a Letter of Appreciation from Mr. Kumar Mangalam Birla and four PRIDE AWARDS by Hindalco (Performance Recognition in Delivering Excellence). She has been Mentor at Aditya Birla Group-World of Women and the Chairperson-Internal Complaints Committee-POSH at Hindalco. She was a Member of the Corporate Business Value Committee at Hindalco and the Apex Sustainability and Compliance Committee at Hindalco (2016-2019). She had also been the Legal Risk Champion for legal function at Hindalco. Previously, she has worked with Dhruve Liladhar & Co - Advocates Solicitors & Notary and Vimadalal & Co-Advocates & Solicitors.

"I hope we continue to see more and more women joining this wonderful profession. **May we all rise together and reach for the stars!"**

Sanjit Kaur Batra

Regional Legal Director Greater Asia, International Flavours & Fragrances

Sanjit Kaur Batra is the Regional Legal Director of Greater Asia at International Flavours & Fragrances. She leads the legal, secretarial, and compliance functions for the organization. And as a part of the corporate and business leadership team, she provides strategic inputs to facilitate business growth in a complex regulatory environment, improve legal processes, and lead policy advocacy efforts. Sanjit's core competencies include Intellectual Property, Corporate Advisory, M & As, Divestiture, Contracts, Litigation, Policy Formulations, and Advocacy, Ethics and Compliance, Competition and Anti-Trust, Corporate Governance, and Government and Regulatory affairs. A graduate in Law from Kurukshetra University, Sanjit has diverse experience of working in international agencies, law firms, and as in-house counsel. She has worked with DuPont as Legal Head (South Asia) and APAC Counsel (Nutrition & Biosciences); as a Commercial Specialist for Intellectual Property (South Asia) with U.S. Patent and Trademark Office; with Nucleus Software as Associate Manager – Legal; and even with the United Nations High Commissioner for Refugees.

Sanjukta Kulkarni

Vice President & General Counsel, Larsen & Toubro Infotech Ltd

Sanjukta Kulkarni is the Vice President and General Counsel at Larsen & Toubro Infotech Limited and is responsible for the global legal portfolio. Her responsibilities include providing end-to-end legal support for LTI and subsidiary companies across services, software, and global delivery. She is in charge of all legal issues of LTI globally – commercial contracts and contractual compliance, employment issues, statutory and government investigations, and litigation including managing class action suits. She advises on the whistle-blower investigation process, M&A integration and general policy matters, HR function on recruitment, termination, rebadging and policy matters, and Corporate Communications on important matters. She is also a member of the Risk Operating Committee. Sanjukta was previously Country Counsel at Hewlett Packard Enterprise where she was responsible for legal function across four major HPE entities in India. Hewlett Packard Enterprise India Private Limited, Hewlett Packard GlobalSoft Private Limited (now EIT Services India Private Limited), Hewlett Packard (India) Software Operation Private Limited & Global eBusiness India. She was also an advisor to the Managing Director and Boards of all the above entities on all strategic and sensitive matters. She has also worked with Capgemini India Private Limited as Deputy General Counsel, Tata Consultancy Services Limited as Senior Corporate Counsel, and Head Legal at TCS eServe Ltd. Sanjukta is a regular Speaker at the TCS Leadership program 'Ambassador Corps', and the continuous learning program 'Pragati'. She leads and conducts Engagement Manager Legal Training for Delivery Leaders in Capgemini, India.

"**This is such a great testament to gender diversity.** As a woman at the workplace, I like to be greeted with a firm handshake followed by an equal pay."

Shalini Saxena

General Counsel, Pine Labs

Shalini Saxena is the General Counsel at Pine Labs. She is responsible for business targets and growth of the organization, oversees compliance and secretarial support across the Asia-Pacific, evaluates digital technology challenges, and advocates a business enabling regulatory framework. Investments, acquiring, and strategic investments both in and by the Company is the other key deliverable. Shalini has dabbled with commercial transactional work and M&A across multiple jurisdictions such as Bhutan, Nepal, Georgia, Vietnam, Malaysia, China, South Africa, and Dubai. She was General Counsel for GE Renewables, ASEAN, a Tier 1 business in GE, comprising Wind and Hydro products and services where one of her key projects was implementing a Turnkey solution for WIND business comprising of multi-dimensional risk. She has previously worked with MIH Web, a South African-based company part of the Naspers Group. She had been Manager Legal with erstwhile GE Countrywide, a business unit of the General Electric Company, USA, and worked with Kundra & Bansal law firm as a litigating and corporate associate. Some of Shalini's significant achievements include participating in ASSOCHAM Committee matters on Renewables industry; liaisoning with commercial customers to drive localization and standardization of process and contracts; and advocacy on SCOMET/Data Suppression with export/custom authorities. She was involved in setting up an R&D centre in India to evaluate risk on tax, legal, commercial issues; and put on the ground a strategy for solar companies to map the risk and mitigate with workable solutions. Shalini has also been instrumental in blogging to help employees understand and find their voice in this "Me Too" era. She has assisted in formulating company policy and advising corporates/Institutes in matters of harassment.

Swati Sharma

Partner, Anand & Anand

Swati Sharma is a Partner at Anand & Anand. Her core expertise is in Intellectual Property prosecution and contentious, advisory and litigation in India and the SAARC region, privacy and internet laws, mergers and acquisitions, advertisement laws, and contractual and commercial laws. She has extensive experience in intellectual property laws, the entire life cycle of brands, advising on brand selection and protection process involving trademark searches, office actions, hearings, contentious matters in India and SAARC regions. She is currently managing several portfolios aggregating to more than 15,000 files. She has argued and got TCS declared as a well-known trademark. Being an active interface between the Government and legislature, Swati was part of the working group constituted to make suggestions to the Trademarks Amendment Rules, 2017. She was involved in drafting The Commonwealth Games Protection of Intellectual Property Act, 2010. She has taken a leadership role in the Unreal campaign of the International Association of Trademarks to educate students internationally on counterfeiting issues. An articulate professional, Swati has been a Speaker at the International Franchise, Retail and Licensing Show, the MIP India IP and Innovation Forum, the World IP Forum, and the International Trademarks Association at Seattle in 2018.

Tahira Karanjawala

Principal Associate, Karanjawala & Co

Tahira Karanjawala is the Principal Associate at Karanjawala & Co. While she primarily practices litigation before the Supreme Court of India, she also regularly appears before the High Courts of Delhi and various other Courts, tribunals, and arbitral tribunals across India. Tahira has catered to an impressive and diverse client roster. That includes some of the country's leading corporate houses such as Tata Sons, MSD Pharmaceuticals, Google, Bloomsbury, GVK, GMR, SMS, and Noida Toll Bridge Company. She has also represented and advised several reputed individuals and families including Mr. Nusli Wadia, Mr. Jyotiraditya Scindia, the erstwhile Baroda Royal Family, the erstwhile Holkar Royal Family, Mr. Rajdeep Sardesai, and Ms. Karishma Kapoor. An active participant in the pro-bono practice and public interest initiatives undertaken by Karanjawala & Co, she furthered the interest of a reformist section of the Dawoodi Bohra community which suffered as a result of ex-communication. She has also taken up cases aimed at safeguarding the fundamental rights of members of the hearing-impaired community and the LGBTQ+ community. An alumnus of Amity Law School, New Delhi, and LLM from Columbia Law School, New York, Tahira is also registered as an Attorney in the State of New York. In 2020, she qualified as an Advocate on Record in the Supreme Court of India securing Rank 1 in the AoR Examination receiving a Gold Medal from the Board of Examiners of the Supreme Court, a Certificate of Honour from the Mukesh Goswami Memorial Fund, the P.R. Kumaramangalam running trophy and the O.P. Malhotra Award.

Tanvi Kumar

Partner, Khaitan & Co

Tanvi Kumar is a Partner in the Corporate Team at Khaitan & Co. Her practice areas include Mergers & Acquisitions and Corporate & Commercial. She specializes in mergers and acquisitions, joint ventures, inbound and outbound investment from India, and general corporate advisory, across a broad spectrum of sectors. Tanvi has in-depth knowledge and expertise in providing day-to-day corporate advisory, commercial contracts, stock acquisitions, private equity and venture capital transactions, business/asset transfers, financing documents, internal reorganization/restructuring issues, and secretarial matters. Being a transaction lawyer, Tanvi has successfully led teams on numerous transactions from start to finish. And while doing that, she has developed working relationships with firms like Kirkland & Ellis LLP, Clifford Chance, Sheppard Mullin LLC, Debevoise & Plimpton, White & Case, London, Weil Gotshal & Manges, and Bennet Jones, LLP. Tanvi has represented leading Indian corporates, foreign companies, and private equity funds. She has advised City Football Group in its landmark entry in the Indian football space; Sealed Air Corp on its joint venture with Kris Flexipacks in India; SIS Prosegur Holdings Private Limited/Prosegur Compañia De Seguridad S.A. concerning their India operations; GE Mauritius Infrastructure Holdings Limited in its acquisition of 67% stake in Advanced Systek Private Limited. In the Mergers and Acquisitions and Private Equity arena, Tanvi has advised Ahead Global Holdings in its acquisition of Molson Coors India Private Limited; Sandvik Machining Solutions AB, Sweden on the acquisition of tools machining business of Ashok Piramal Group; Bertlesmann Nederland B.V on series C round of investment in Rupeek Fintech Private Limited; and Abu Dhabi National Energy Company in a distressed sale of its stake in Himachal Sorang Power Private Limited. An alumnus of ILS Law College, Pune, Tanvi was recognized as a 'Notable Practitioner' for M&A, IFLR1000 in 2020.

> "May we be the power - naari shakti - may we **resonate that power.**"

Tejal Patil

Senior Legal Advisor, OYO

Tejal Patil is the Senior Legal Advisor for INSEA (India and South East Asia) for OYO Hotels and Homes and a key member of the OYO Global leadership team. She is responsible for the company's legal function in the region. That includes managing regulatory, contractual, and legal compliance for the company, steering OYO's strategic initiatives, dispute resolution, and providing actionable counsel on strategic business decisions and operational execution.

With extensive legal, compliance, risk, and governance experience across Asia Pacific, Tejal has provided strategic and risk advise to CEOs, senior management, Board of Directors, and assisted in accelerating growth and keeping the company safe.

Her previous experience includes Asia-Pacific roles with GE's healthcare, consumer, and industrial and aviation businesses, as General Counsel based in Singapore and Tokyo.

Tejal is a qualified solicitor at both the Bombay Incorporated Law Society and the Law Society of England and Wales and a certified Six Sigma Green Belt. She has been recognized for her team-building, thought leadership, and contribution to the compliance ecosystem.

"A huge thank you to Aakriti and the Legal Era team for really identifying and **inspiring women in our field.**"

Tulika Jesrani

General Counsel, India Kimberly-Clark

Tulika Jesrani is the Director – Legal and General Counsel at Kimberly-Clark (India). She heads the Legal Function and is responsible for Kimberly-Clark India operations – both Consumer and Professional businesses. As a part of the India Leadership Team and APAC Legal Leadership Team, she provides strategy and legal excellence towards accomplishing the India Team Objectives. Tulika provides legal advise, leadership, strategy, and risk management in all legal matters. In the capacity of a General Counsel, she plays the role of a business partner and trusted advisor to the heads of the consumer and professional businesses of Kimberly-Clark. She is responsible for driving compliance in India and provides legal advise on employment-related issues. Also involved in Policy Formation and Knowledge-sharing, she continuously assesses the impact of relevant legal evolutions and internal norms and advises the Management accordingly. She leads and manages legal disputes/litigations and marketing claim challenges and advises and manages IP disputes including counterfeiting and infringement. In the Competition arena, she advises on pricing and competition law-related issues. Before joining Kimberly-Clark, Tulika worked with L'oreal India Private Limited as the Associate General Counsel. She was responsible for all legal aspects of its diverse business divisions in India and Bangladesh. Before that, she has worked with Piramal Healthcare Limited, DSK Legal, and Crawford Bayley & Co. An alumnus of Amity Law School, Tulika has developed and imparted multiple learning programs and training sessions on Advertising Claims, Packaging & Artwork Communication, Consumer Disputes, Contract Methodology, Competition Law, etc.

Twinky Rampal

Partner, Anand & Anand

Twinky Rampal is a Partner at Anand & Anand. As part of the strategic initiatives team, she specializes in providing tactical advise to build a robust structure for identification, protection, enforcement, and maximization of IP through identifying value chains. She has extensive experience in handling global trademark portfolios, advising on brand guides, providing advise on brand adoption, monetization, protection, and enforcement, drafting and negotiating various contracts, advising on various commercial transactions, advertising law, and related disputes. Her most recent assignment involved working on the IPO of a leading hospitality chain raising ₹ 1000 crores. Some of her recent publications include a chapter co-authored for The International Comparative Legal Guides and an article for the International Franchise Association. She is invited to share insights on various aspects of IP. Pinky conducted an IP Technical Session at Mehr Chand Mahajan DAV College for Women, Chandigarh; was invited to ICC-IPO IPR Awareness Program for Technical Institutes at JC Bose University of Science & Technology; YMCA Faridabad, to sensitize the students on the indispensability of Intellectual Property in technology. At the World IP Forum 2018, she shared insights on 'Building up an effective IP shield for a Multinational Efficiently'. One of her assignments includes cracking concepts of Haptic Technologies, Artificial Intelligence, 3D printing, Virtual reality, Robots, Avatars, Business models et al. At a conference on "Disruptive Innovation" attended by over 150 CEOs, she conducted a workshop along with Safir Anand on "Sensory Trademarks". Twinky is a member of ASSOCHAM and the International Trade Mark Association. She has also served on the Trade Marks Office Practices Committees of INTA in the past.

Urvashi Sahai

General Counsel & SVP-Legal – OCL, Paytm

Urvashi Sahai is the SVP & General Counsel at One97 Communications Ltd. (Paytm). Leading the Legal and Compliance for the Group, Urvashi is involved in advising, strategizing, and supporting diverse matters. That includes investments, structuring, litigation, regulatory matters, commercial contracts, and liaisoning with Law Enforcement Agencies. Urvashi also leads the Compliance program. Urvashi constantly deals with and strategizes around the extant and evolving regulatory regime in India. She also supports the Government Relations & Corporate Affairs team in engagements in the external ecosystem. She manages RE Legal, Litigation, Contracts, Corporate Governance / Advisory, IP portfolio, support and advise all Business Units and the Company Secretarial functions. She advises on a variety of issues ranging from daily operations to policy matters to complex matters requiring serious thought leadership. In her career, Urvashi has navigated through complex regulatory interventions and actions in India and contentious litigation. She also coordinates international legal initiatives in the market and advises Asia and International Legal on legal and regulatory business risks and resolutions arising in India. She has earlier worked with Wal-Mart India Pvt. Ltd., Amarchand Mangaldas and Suresh A. Shroff & Co., and Associated Law Advisers. Urvashi has published articles on legal, economic, and social issues in leading dailies such as The Pioneer and The Economic Times and authored / co-authored articles published in international legal journals. An alumnus of Campus Law Center, Delhi University, Urvashi is also registered as a Solicitor with the Supreme Court of England & Wales.

> "To all women awardees today, much more power to all of us! **Much more wind under these glorious golden wings!"**

Valarmathi Selvaraj

Associate Director - Legal, Accenture Solutions Pvt Ltd

Valarmathi Selvaraj is currently the Associate Director - Legal at Accenture. She is largely responsible for all Employment issues relating to the entire life cycle of an employee, covering employment law disputes, drafting of policies and employment agreements, advising on employment law issues, disciplinary matters, POSH, etc. Driven by the mantra "be open to new experiences and perspectives, turn work pressures into opportunities and maintain a healthy work-life balance," she has received multiple rewards from Accenture. Team A awards – Leadership DNA CHAMPION in 2020; COVID Response Management Project in 2020, Value Creator 2016, Individual Core Value Award in 2015, ER and ER in 2013, and Process Enhancements in 2014. Valarmathi has experience as an Employment Law Counsel, a practicing lawyer, and an in-house counsel. Her other areas of practice of experience include civil litigation, arbitration, and consumer. She has also had an association with the lower judiciary as a part-time mediator, Lok Adalat presiding officer, and legal aid counsel. As a Legal Aid Counsel, Valarmathi has helped the weaker sections of the society in the acquittal of innocent victims implicated in criminal cases. Previously, she has worked with Kochhar & Co., Luthra & Luthra Law Offices, Pasrich & Co., Bhasin & Co. and was also practicing independently. An alumnus of Delhi University, Valarmathi holds a certification in Leadership and Change Management from XLRI Xavier School of Management.

Vandana Seth

AVP Legal, 1MG

Vandana Seth is the Head Legal at 1MG Group. She heads the legal and compliance vertical of 1MG Group. She manages the legal, compliance, secretarial, and fundraises. She is a part of the women leadership team at 1MG Group as well as for multiple entities/group companies.

Her key specialization areas include legal compliance policy/regulatory process validation and implementation IP, fundraise, acquisition telecommunication, legal process automation, POSH matters, and secretarial function.

Prior to joining 1MG, she worked with Deloitte India and Themis Group. She has comprehensive experience in all fields.

Vandana has completed her graduation, CS, and post-graduation and has post-qualification experience in managing the transactions and mergers/acquisitions streams.

"I wish to thank the females in my life for being mentors. **I'd like to dedicate this award to my daughter** who has been the most adjusting person in my journey."

Vandita Malhotra Hegde

Founding & Managing Partner,
Singh & Singh | Malhotra & Hegde

An accomplished lawyer with legal advisory and corporate leadership experience, Vandita specializes in Media & Entertainment and Intellectual Property. A well reckoned legal name in the media and entertainment industry for her strategic work and progressive advocacy in both fields of litigation and non-litigation work, Vandita has been at the forefront of advocating progressive copyright laws. She specializes in setting up robust legal systems and processes for many start-ups and business houses across industries and extensive documentation for content. Previously, Vandita worked with Mulla & Mulla, Craigie Blunt & Caroe, Solicitors and Advocates. She has extensive in-house experience with India's leading media conglomerate Times Group where her last role was as Senior VP and Head of Legal, Entertainment Network (India) Limited (Radio Mirchi). Her most notable achievements have been successfully managing litigation for Times Group on issues of applicability of the most difficult compulsory and statutory license provisions of the Indian copyright law to radio and the internet business before the Supreme Court of India and various other Courts across India. Vandita is a founding member of the Global IPR Protection Forum that propagates IP awareness and conducts various debates. She is the preferred choice of some of the biggest studios, internet companies, and media groups including broadcasters operating in India. She also serves on the board of a leading content producer in Bollywood. An alumnus of Government Law College, Mumbai, Vandita has been applauded for her extensive contribution towards reducing music royalty rates for the radio and internet industry.

"We need paternity leaves. **Until then, we need to be biased towards women** and cannot be gender neutral."

Varsha Chaudhary Jain

Head – Legal, Nutrition, Hindustan Unilever Limited

Varsha Chaudhary Jain is the Head – Legal, Nutrition at Hindustan Unilever Limited. Starting with litigation and moving on to corporate counsel roles in FMCG companies of increasing size and complexity and progressively higher levels of responsibilities, she has been part of the leadership team of ₹4000 Crore business vertical in HUL and is responsible for legal affairs, statutory compliances, risk and crisis management, and advising on strategic decisions. When Unilever announced the acquisition of Horlicks and other nutrition brands of GSK in one of the largest deals in the FMCG sector in December 2018, as legal lead for integration from the GSK side, Varsha supported the development of an integration framework. She worked on securing necessary regulatory approvals and completion of legal process, advised on transition and integration requirements for all aspects of the business, and collaborated with global and cross-functional teams at both companies for a successful merger and integration. Post the merger, Varsha is the legal lead for the merged business. Apart from partnering with the business for business growth, she ensured the completion of post-merger activities for the transition of all properties, contracts, licenses, and approvals and provided support to operations and people integration. She has also provided legal support for the successful launch of innovation and High Science products in GSK and supported the innovation for Emerging Markets in the OTC category. Varsha was also instrumental in the transition of Amway into the new regime of food and nutraceutical laws. She has worked with GlaxoSmithKline Consumer Healthcare Ltd., Amway India Enterprises Pvt. Ltd., Kohinoor Foods Ltd., H B Stockholdings Co. Ltd., India Law Offices, and Fox Mandal & Co.

> Thank you, Legal Era! Year-on-year you've been doing great service for recognizing women in the legal field. **We as women leaders must pave the way for more women."**

Varuna Bhandari Gugnani

Advocate & Mediator Proprietor, Bhandari & Associates

Varuna Bhandari Gugnani is an Advocate & Mediator Proprietor. She is one of the first trained mediators of the Supreme Court Mediation Centre. She is a Senior Mediator in Supreme Court Mediation Centre, Punjab & Haryana High Court Mediation Centre, Delhi Dispute Resolution Society, Government of NCT Delhi, Delhi Mediation Centre, Patiala House, New Delhi and is also a Trainer with Mediation and Conciliation Project Committee, and Supreme Court Mediation Centre. Varuna has successfully mediated more than 500 disputes between the conflicting parties in sectors such as Insurance Sector; Bank Loan Settlements; Disputes relating to Civil Rights Commercial/Business Disputes; Construction; Consumer Fraud; Contract; Employment; Entertainment; Non-profit Organizations; Partnerships; Personal injury; Intellectual Property; Landlord/Tenant Disputes; Medical and other Professional Negligence; Real Estate; Torts; Trusts; Matrimonial and other Family Disputes; and minor criminal matters where settlement is permissible under the Criminal Law. While working as Mediator at Delhi Dispute Resolution Society, Varuna settled more than 200 matters. Varuna is a Fellow of the International Academy of Mediators, a Life Member of the Indian Council of Arbitration, and a Member of the International Centre for Alternative Dispute Resolution, and in the Governing Body of Mediators India. She has participated in many international conferences including the Singapore International Mediation Conferences, Asia Pacific International Mediation Summit organized by the American Bar Association, and the International Academy of Mediators Conferences.

Yashodhara Cran

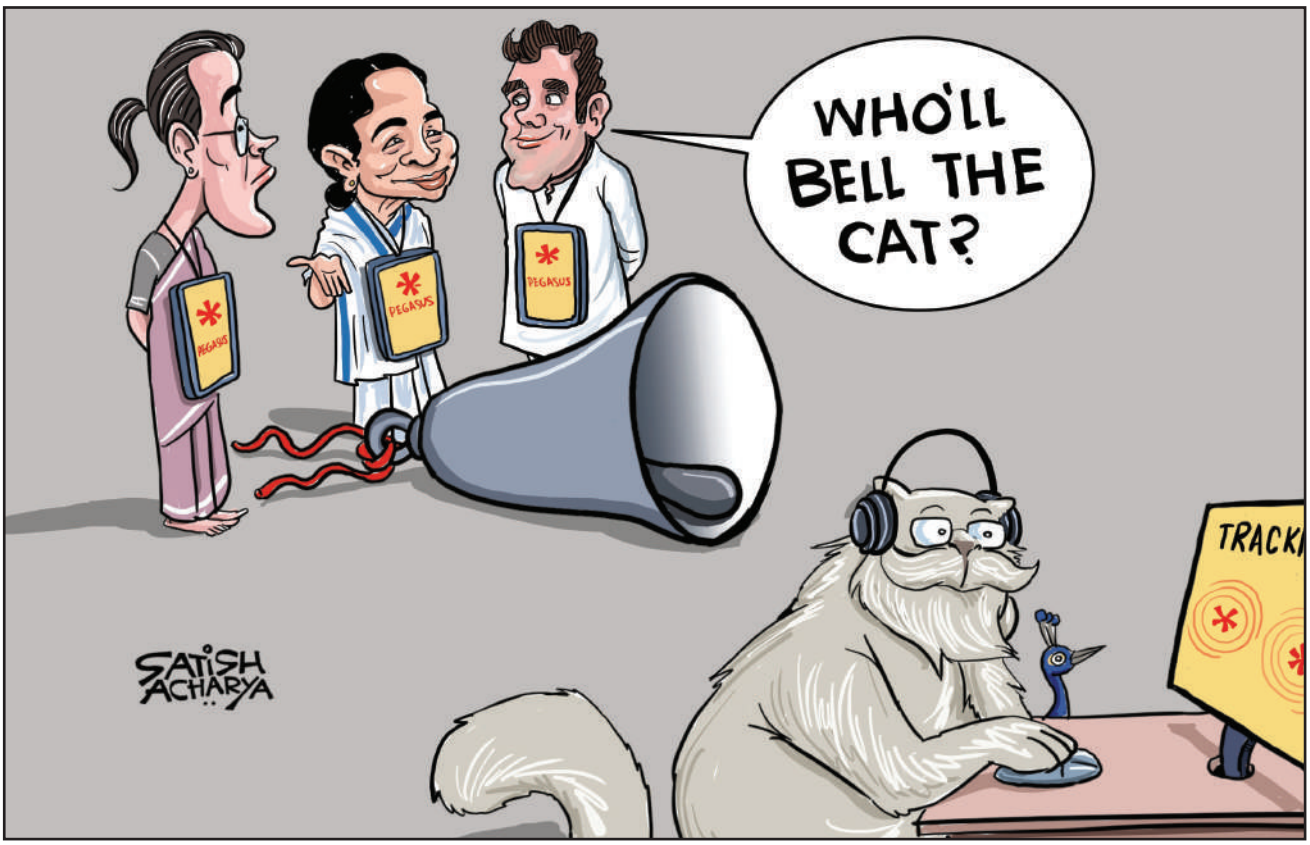
Head - Legal at Jio World Centre, Reliance Industries Limited

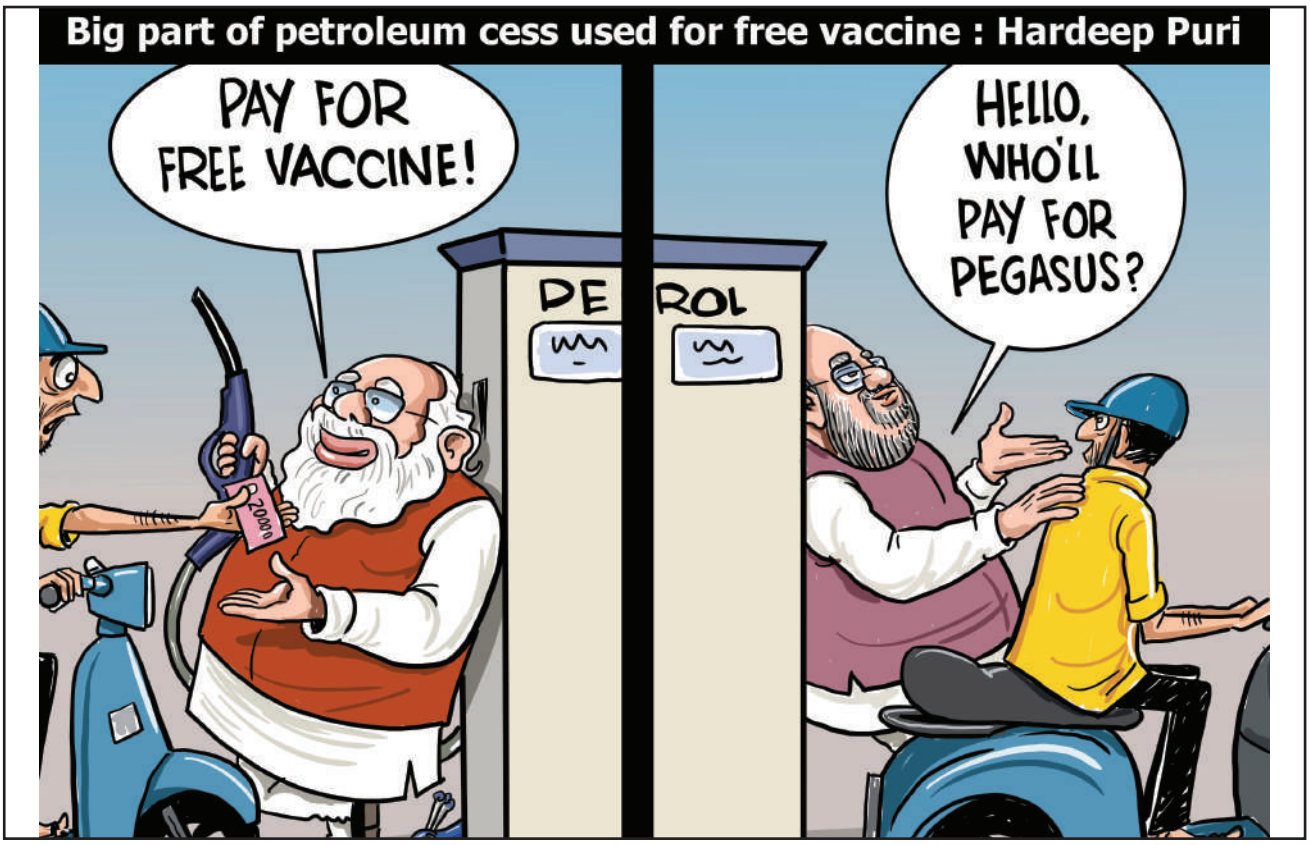
Yashodhara Cran is the Head – Legal at Jio World Centre, Reliance Industries Limited. She is responsible for all legal compliances pre and post-opening of the Centre. Handling a team of Advocates and Solicitors in the legal department, she is directly involved in commercial negotiations and contract drafting; responsible for IP laws and compliances; policy formulation and implementation; Systems Operating Procedures; and MIS presented to the Board of Directors.

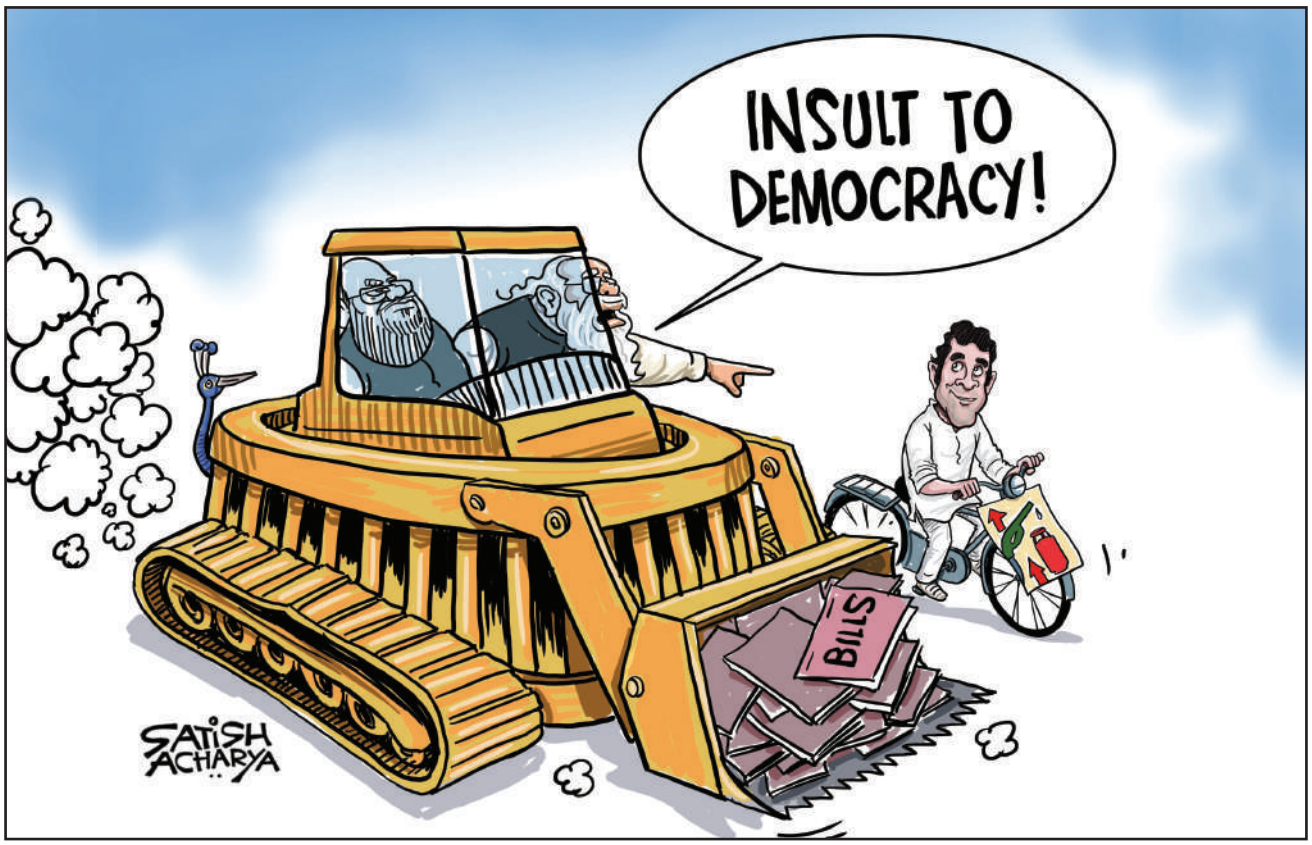
Previously, she worked with Raheja Universal (Pvt) Limited. She oversaw projects in the MMR region and Pan-India real estate projects from inception to completion. She has also worked with M/s. Kanga and Company as an Associate and was extensively involved in litigation, real estate law, and corporate law.

She has re-qualified to be a Barrister and Solicitor in Ontario after passing the Canadian LL.B. in and then the Bar exam conducted by the Law Society of Ontario. Upon being called to the Bar, she practised as an Associate with the law firm of M/s. Fernandez Davila & Associates in Ottawa, Ontario for 2 years and then as Legal Counsel for one of Canada's largest Energy Companies known as the Energy Savings Group.

"Recognition leads to empowerment. And the Legal Era Team has always been at the forefront of this excellent initiative. **There cannot be a greater tribute to women's empowerment."**


WHO'LL BELL THE CAT?
PEGASUS
SATISH ACHARYA
TRACK


Big part of petroleum cess used for free vaccine : Hardeep Puri
PAY FOR FREE VACCINE!
DE ROL
HELLO, WHO'LL PAY FOR PEGASUS?


INSULT TO DEMOCRACY!
BILLS
SATISH ACHARYA


KERALA!
UNDER CONTROL!
SATISH ACHARYA

RNI Number: MAHENG/2011/46887. Postal Reg. No: MCN/304/2020-2022. Posted at Mumbai Patrika Channel Sorting Office GPO, Mumbai 400001 on 15th of every month
Date of Publication 12th of every month. WPP Licence Number: MR/Tech/WPP-148/North/2020-2022 (License to post without prepayment)

nim wash
Vegetable & Fruit Wash

5 IN 1 PROTECTION

100% Natural Action^

ITC Nimwash gives 99.9% protection against Covid-19 coronavirus* and washes away pesticides° & 99.9% germs^x^, keeping your family safe and healthy.

- 99.9% protection against covid-19 coronavirus*
- 99.9% protection against diarrhoea-causing bacteria• and rotavirus~
- 99.9% protection against spoilage causing bacteria and fungi¤
- Protection against stomach infection causing Roundworm parasite#
- Washes away pesticides°

O&M 1269

Creative Visualization.

Use in concentrated form for 99.9% protection against covid-19 coronavirus*. Rinse thoroughly. | *Basis lab study on SARS-COV-2 virus. | •Basis lab study on sample diarrhoea causing bacteria. | ~Basis lab study. | ¤Basis lab study with sample bacteria and fungi. | #Basis lab study on Ascaris suum (Roundworm) eggs. | °From surfaces of vegetables and fruits. | ^100% Natural Action means anti-microbial action, basis lab study. | ^x^From surfaces of vegetables & fruits. Basis lab study on select vegetables & fruits.

Also available on:

amazon SMART SUPERSTORE Flipkart bigbasket GROFERS