LEGAL MEDIA GROUP

LEGAL ERA

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www.legaleraonline.com | ₹ 100 | US$ 30| £ 20 | November 2021 | Vol. XII | Issue VII| Pages 138

GLOBAL

LEGAL ERA SHINES THE SPOTLIGHT ON INDIA'S MOST PROMISING YOUNG LEGAL TALENT AT THE

UNDER 40 2021 — 6th Annual — RISING Stars

EDITION

CREDITS

Legal Media Group

August 2021 | Vol. XII | Issue VII

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

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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.

Are we ready for INTERNET 2.0?

And just like that Facebook has renamed itself "Meta" while also announcing that the financial results of its augmented and virtual reality labs will be published as a separate unit, where it is investing millions to build its "METAVERSE". Meta plans to spend at least $10 billion on METAVERSE-related projects this year.

So what's the fuss about? The term METAVERSE has been around in gaming where players assume avatars that walk around and interact with other players. However, the METAVERSE of Meta and other Big Tech companies' dreams refers to a new digital space where the physical and virtual will converge to offer users a more immersive, multidimensional, and lifelike experience vis-à-vis existing virtual spaces that look and feel like the inside of a video game. Imagine having your avatar visit a virtual mall and try on clothes of different brands before purchasing the best outfit or having your avatar complete a virtual sale before the actual one!

Blame it on the pandemic but METAVERSE is attracting a lot of interest from investors and companies who want to be part of the "next big thing". Already, Meta has given itself around five years to try and transition from a social media to a METAVERSE company. Meta does recognize however that virtual reality can be a "toxic environment" especially for women and minorities and that toxicity would be an "existential threat to the company's mission if it turns off mainstream customers from the medium entirely". No surprise then that Meta has pledged $50 million for research into practical and ethical issues around its METAVERSE. Meta aims for "almost Disney levels of safety" for its METAVERSE but there's no saying how and to what extent a technology that opens up new possibilities can also be used to cause harm. As it is, harassment in the digital space has assumed newer and more evolved forms that even the cleverest of companies find difficult to penetrate. Further, METAVERSE is not without its implications for society and economy where it brings renewed focus on issues such as intellectual property, data protection and privacy among others.

The biggest question that begs an answer is who will make and enforce laws. Tech giants may have already bought into the idea of a METAVERSE but do we apply old laws to new technology at the risk of putting a square peg into a round hole so to say or do we enact new laws altogether for what is being billed as the next level of the Internet. Clearly, there is no right solution to this dilemma!

Aakriti Raizada

'LEGALLY LOVED' BY THE PEOPLE. FOR THE PEOPLE

"Hearty Congratulations to the Legal Era team for their superlative work over the years. The October edition had great reads, including the interview with Sunil Mehta which also provided insights into Environmental, Social and Governance (ESG) among others. Keep up the good work Legal Era!"

Sanjay Mishra
Law Officer

"Every edition of Legal Era has topical and carefully curated content which keeps me abreast of the latest happenings in the legal universe. It has become my go-to magazine for all things legal. I hope the team will continue putting out high-quality content for professionals like me."

Prof Ajit Shrivastava
Law College

"I found the health check-up for start-ups' article in the October edition of Legal Era Magazine very interesting. While there is a lot of variety in terms of content every month, I would encourage the team to publish more such features that inform and educate about new-age phenomena."

Paras Singh
Associate Legal, Law Firm, New Delhi

"I read Legal Era magazine as much for its wide-ranging articles and in-depth analyses as for its regular features such as Nation@ Glance, World@ Glance, Lateral Moves and Within the Circle, not to mention the Fun 'n' Frolic page which provides a fun twist to current matters."

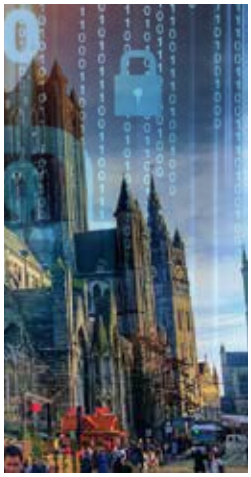
Aashima Gupta
Law Student

"Of late, I've seen a lot of features and views by overseas authors, legal professionals and academics being incorporated in Legal Era magazine. The magazine has definitely come a long way and I wish to congratulate the team for their hard work and dedication. I'm sure the magazine's journey will become even more fulfilling in years to come."

Rekha Jain
Legal Advisor

QUICK GLANCE

The use of BIOMETRIC DATA at the workplace in Belgium and some neighboring countries



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DATA PROTECTION LAW AT THE DUBAI INTERNATIONAL FINANCIAL CENTRE AND GENERAL DATA PROTECTION REGULATION IN THE EU (GDPR)

A COMPARATIVE APPROACH

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DISHONOR OF CHEQUE AS SECURITY AN OFFENSE: SUPREME COURT

The rule applies when the debt is not recoverable and the cheque has not matured

In a significant judgment, the Supreme Court has ruled that the dishonor of a cheque issued as security can attract offense under Section 138 of the Negotiable Instruments Act (NIA), 1881.

The division bench of Justice MR Shah and Justice AS Bopanna made it clear, "There cannot be a hard and fast rule that a cheque, which is issued as security can never be presented by the drawee of the cheque."

Such contention would arise only in a circumstance where the debt has not been recovered and the cheque issued as security, has not matured to be presented for recovery of the amount. This, if the due date agreed for payment of the debt has not arrived, the court appraised.

"A cheque issued as security, pursuant to a financial transaction cannot be considered as a worthless piece of paper under every circumstance. 'Security' in its true sense is the state of being safe and the security given for a loan is something given as a pledge of payment. It is given, deposited or pledged to make certain the fulfillment of an obligation to which the parties to the transaction are bound," the top court stated.

Justice MR Shah and Justice AS Bopanna

"If in a transaction, a loan is advanced and the borrower agrees to repay the amount in a specified timeframe and issues a cheque as security to secure such repayment; if the loan amount is not repaid in any other form before the due date or if there is no other understanding or agreement between the parties to defer the payment of the amount, the cheque which is issued as security would mature for presentation and the drawee of the cheque would be entitled to present the same," it added.

https://www.legaleraonline.com/from-the-courts/dishonour-of-cheque-as-security-an-offence-supreme-court-785009

SUPREME COURT COLLEGIUM RECOMMENDS TRANSFER OF JUDGE TO CALCUTTA HIGH COURT

Justice Joymalya Bagchi

Justice Joymalya Bagchi to go back from Andhra Pradesh High Court

The Central government has notified the transfer of Justice Joymalya Bagchi back to Calcutta High Court from Andhra Pradesh High Court.

The notification issued by the Ministry of Law & Justice stated, "In exercise of the powers conferred by the Constitution of India, the President, after consultation with the Chief Justice of India, is pleased to transfer Justice Joymalya Bagchi, judge of the Andhra Pradesh High Court, as a judge of the Calcutta High Court.

In 2020, the collegium had recommended transferring Justice Bagchi from Calcutta to Andhra Pradesh. But, providing no reason, last month, the collegium, headed by Chief Justice of India N V Ramana, recommended the "re-transfer" of Justice Bagchi to his parent high court.

Justice Bagchi's transfer to Andhra Pradesh High Court happened during the controversy over allegations by Chief Minister of Andhra Pradesh Y. S. Jagan Mohan Reddy. Citing the reason, it was said that a senior Supreme Court judge was interfering in the functioning of the Andhra Pradesh High Court.

https://www.legaleraonline.com/from-the-courts/supreme-court-collegium-recommends-transfer-of-judge-to-calcutta-high-court-784060

RULES FORMULATED BY SUPREME COURT TO LIVESTREAM DAY-TO-DAY PROCEEDINGS

Judge states everyone in the country has a right to know what happens inside a courtroom

Justice D Y Chandrachud has said that the live streaming rules had been formulated by the Supreme Court e-Committee so that the courts could telecast its proceedings.

"Everyone in the country has a right to know what goes inside a courtroom," he remarked while speaking at the inauguration function of the annexe building of Bombay High Court's Aurangabad Bench.

Making another significant announcement, the Supreme Court judge informed that he had written to the chief justices of all high courts requesting that by January 2022 the cases should be e-filed in the district and high courts.

Speaking at the event, Minister for Law and Justice, Kiren Rijiju praised the Supreme Court for emerging as a legal leader with over 96,213 virtual hearings till 9 July 2021. Amid the COVID-19 pandemic, it had upgraded the cloud-based video-conferencing infrastructure, he said.

https://www.legaleraonline.com/from-the-courts/rules-formulated-by-supreme-court-to-live-stream-day-to-day-proceedings-783497

JUDICIARY'S MISSION IS TO ADMINISTER JUSTICE TO THE COMMON MAN: JUSTICE D Y CHANDRACHUD

The quest for fairness unites judges and lawyers

Supreme Court judge Justice DY Chandrachud has said that in a court of law there might be one universal truth, but the paths to it can be many. He was speaking at the inaugural function of the new annex building of the Bombay High Court's Aurangabad Bench.

He said that in the quest for justice, both judges and lawyers have one common mission, which is to administer justice to the common man.

"We are all dressed in black and white, as it is a symbol of the homogeneity of this profession. Dressing alike means representing a common mission of justice for the citizens," he conceded while suggesting that the younger members at the Bar must be nurtured and made to understand this.

Justice Chandrachud highlighted the achievements of the judiciary, especially with respect to the disposal of cases. Still, admitting that the pendency of cases in courts was high, he felt a large number of cases were disposed also.

Lauding the feat of the judiciary, he said, "We find from the National Judicial Data Grid (NJDG) that 15.42 crore orders are available. We have given judgment in 11 crore cases and only 4 crore cases are pending."

Justice DY Chandrachud

Meanwhile, the High Courts have 56.02 lakh cases pending and 3.18 crore cases have been concluded.

The Supreme Court judge highlighted, "In Maharashtra, over 48 lakh cases are pending, the oldest case being from Angola Taluka where the accused is absconding since 1958. About 16,474 cases have been stayed by the High Court."

Hence, just as there is a cause to celebrate, there should also be introspection on the way forward, he guided.

https://www.legaleraonline.com/from-the-courts/judiciarys-mission-is-to-administer-justice-to-the-common-man-justice-d-y-chandrachud-783056

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Is The Minimum Required For
A LAWYER
- Dr. N. R. Madhava Menon

DELHI HIGH COURT

THE GOVERNMENT TELLS HIGH COURT WHATSAPP CANNOT AVAIL OF FUNDAMENTAL RIGHTS

Foreign entity cannot challenge Indian laws

An affidavit was filed in the Delhi High Court by the Central government stating that being a foreign company, WhatsApp cannot avail of fundamental rights. It cannot invoke the jurisdiction of the court or challenge the constitutionality of an Indian law under Articles 19 and 21 of the Constitution.

The Facebook-owned messaging giant had filed a lawsuit in the High Court against the Indian Government in May. It sought to block the traceability clause of the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021. The rules require social media platforms, with more than five million users, to locate "the first originator of the information," if required by the local authorities.

The affidavit, filed by the Ministry of Electronics and Information Technology said that WhatsApp does not have a place of business in India. Thus, "the constitutionality of a provision of law cannot be challenged by a foreign commercial entity on the ground that it violates Article 19".

Senior Supreme Court advocate, Sanjay Hegde asserted, "While all fundamental rights are not available to foreigners, especially to a company, it is worth noting that all fundamental rights are also not available to the Indian companies. However, I do not see Indian courts taking this argument seriously on the matter of traceability and privacy."

The affidavit had contended that the traceability requirement does not need to break end-to-end encryption and it is the least intrusive way of identifying the originator of the information. WhatsApp's reluctance to modify its technology for compliance is not sufficient ground to invalidate a law.

In the 2018 Prajwala case (to eliminate child pornography, rape and gang rape imagery, videos, websites and other applications), the apex court had asked the government to identify persons who create or circulate problematic content. It said traceability would help curb fake news.

Meanwhile, WhatsApp said that it would not break its end-to-end encryption, as that would undermine the privacy of users. In order to trace even one message, messaging services would have to trace every message.

Traceability requires messaging services to store information that can be used to ascertain the content of people's messages, thereby breaking the very guarantees that end-to-end encryption provides.

India is WhatsApp's largest market with over 400 million users.

https://www.legaleraonline.com/from-the-courts/the-government-tells-high-court-whatsapp-cannot-avail-of-fundamental-rights-783808

DELHI HIGH COURT RULES THAT WORLD BANK IS NOT A GOVERNMENT AGENCY

Government of India does not exercise any control over the affairs of the international financial institution

A Division Bench of Justice Vipin Sanghi and Justice Jasmeet Singh has said that the Government of India does not exercise any control, actual or pervasive, over the affairs of bodies like the World Bank.

Since they are not bound by any directions issued by the government and are not considered 'State' or 'other authority', they have been held as not amenable to writ jurisdiction.

The development comes in a writ petition challenging the decision of the North Delhi Municipal Corporation (NDMC) rejecting the petitioner firm's (A2Z Infraservices Ltd. & Anr.) bid and disqualifying it from participating in any re-tendering process on the ground that it stood debarred by the World Bank.

The petitioner firm was aggrieved with NDMC's decision of rejection of its bid and further disqualification making its debarment from World Bank its basis.

The Ld. Counsel of the petitioner contended that the debarment by the World Bank Group in no way amounted to debarment by the government or a government agency, as the agency did not fall under India's constitutional laws.

The Ld. Standing Counsel for State on the other hand argued that World Bank has representatives of India on its body, which includes the Union Finance Minister and that the Government of India has voting rights in the World Bank. By this logic, it is a government agency.

Commenting on the matter, the Ld. Counsel of the petitioner cited the US court's decision in Phillip W. Sedgwick vs Meri Systems Protection Board, wherein it was held that regardless of the fact that America held 25 per

cent of interest in the World Bank, it was not a 'Federal Agency'.

Adding that India not only has no interest but also has a mere 3.5 per cent voting power, the counsel argued that for the World Bank to be categorized as a 'government agency', it will have to be established that the former acts as an agent of the Government of India.

He submitted that the World Bank certainly did not act on the instructions of the government.

The court held the view that the petitioner cannot be disqualified as the clauses in the agreement purported to debar the bidder who made no disclosure about its debarment by a 'government agency'. But in this case, it could not be construed as encompassing within its scope, bodies like the World Bank.

https://www.legaleraonline.com/from-the-courts/delhi-high-court-rules-that-world-bank-is-not-a-government-agency-783830

BOMBAY HIGH COURT

HIGH COURT HOLDS BOTH DIVORCED PARENTS RESPONSIBLE FOR CHILD'S EDUCATION

Boy moves court to seek maintenance from father

The Bombay High Court's Nagpur branch has unequivocally stated that taking care of their children's education expenses was the responsibility of both divorced parents.

The ruling came after an 18-year-old approached the court on finding it difficult to pay the fees at the Indian Institute of Technology (IIT), Dhanbad, where he secured admission in the mechanical branch.

The division bench dismissed the father's contention that he was unable to raise the maintenance amount, as he had the responsibility of looking after his aged mother, a divorced sister and her daughter. It held that "children must be the first priority of a parent in the matter of maintenance."

Comprising Justice Atul Chandurkar and Justice GN Sanap, the bench said, "Before the petitioner's birth in 2001, his parents had separated and (ever since) he has been residing with his mother. Both his parents are serving as teachers, each earning a salary of over ₹48,000. It is, therefore, apparent that both are equally responsible to share the maintenance as well as the education expenses of their son."

"Even if it is assumed, for the sake of argument, that other persons are also dependent on the father, the child must be his first priority. If he fails to share the maintenance and expenses, then the mother would be required to bear the unnecessary burden," the Court added.

It asked the father to enhance the monthly maintenance to ₹7,500 from ₹5,000, with effect from 27 October 2015, the date on which the student had filed the plea.

The boy, scoring 93 per cent in Grade 10, had moved the High Court after finding it difficult to pay the fees of the course at IIT Dhanbad. While the mother shouldered his education and other expenses, his father paid him ₹5,000 a month, as fixed by the court.

The petitioner had prayed for enhancing the maintenance to ₹15,000.

His parents were granted a divorce on 21 July 2009, through mutual consent.

https://www.legaleraonline.com/from-the-courts/high-court-holds-both-divorced-parents-responsible-for-childs-education-783478

KARNATAKA HIGH COURT

MUSLIM MARRIAGE A CONTRACT; NOT A RITUAL LIKE HINDU MARRIAGE: KARNATAKA HIGH COURT

Judge decides on maintenance under the Muslim Law

In yet another case of a hapless Muslim divorced wife battling for two decades for executing a maintenance decree, the Karnataka High Court has stood in support of the woman.

The Court held that a Muslim man is duty-bound to make provision for his ex-wife's maintenance beyond the iddat period. This, despite paying the mehr, if she remains unmarried and is incapable of maintaining herself.

Justice Krishna S Dixit ruled that Muslim marriage is an agreement of many shades; not a sacrament as opposed to a Hindu marriage. He said that it did not repel certain rights and obligations arising from the dissolution.

The case concerns a petition filed by Ezazur Rehman (52) in Bhuvaneshwari Nagar, Bengaluru. The petitioner prayed for quashing an order passed by the Family Court in 2011. The Court had directed him to pay a monthly maintenance amount of Rs.3,000 to his wife Saira Banu (42), from the date of the case until the death of the plaintiff or until she remarries, or until the death of the defendant.

Rehman had divorced Banu in 1991. Banu complained of dowry harassment and left the matrimonial house after eight months of marriage. The mehr amount fixed at ₹5,000, was paid to her along with ₹900 as maintenance during the iddat period.

After the divorce, Rehman re-married. Subsequently, Banu filed a civil case for maintenance in 2002. But the ex-husband refused on grounds that he had begotten a child and had also been acquitted in the dowry harassment case. The single-judge bench observed that a Muslim man could not deny maintenance to the ex-wife on the ground of 'remarriage.' The judge maintained that the petitioner ought to have known his responsibility towards his ex-wife and the onus of paying maintenance arises from his own act of talaq and prior to marrying another woman.

Quoting the Quran and Hadith, the judge said the right of a divorced woman for maintenance is conditioned on three cumulative factors - insignificant mehr amount, the inability of the woman to sustain herself, and if she does not remarry.

A Muslim marriage "dissolved by divorce, per se does not annihilate all the duties and obligations of parties by lock, stock and barrel." He further added, "In law, new obligations too may arise, one of them being the circumstantial duty of a person to provide sustenance to his ex-wife who becomes destitute by divorce."

The Court said the petitioner's contention is repugnant to law, morality and ethics and that if such a contention is countenanced, it would only encourage talaq, which the law shuns. Citing various conventions on human and particularly women's rights, the judge pointed out that divorce brings hardships to women, and more so to divorced Muslim women.

Divorced women's tears are "hidden in their veils", he noted. It is not that unscrupulous men

do not know this. On mehr, the judge said the payment of frugal mehr money per se could not be a defense for an able-bodied man to defy the decree for maintenance.

Justice Dixit imposed an amount of ₹25,000 on Rehman and requested the trial court judge to execute the same on a war-footing and report compliance to the registrar general of the High Court within three months.

https://www.legaleraonline.com/from-the-courts/muslim-marriage-a-contract-not-a-ritual-like-hindu-marriage-karnataka-high-court-784013

MADRAS HIGH COURT

PIL IN MADRAS HIGH COURT AGAINST AGE AND EXPERIENCE

Chief Justice Sanjib Banerjee

Five lawyers assert the Supreme Court guidelines be followed for the senior advocate designation

A Public Interest Litigation (PIL) was moved before the Madras High Court challenging the validity of Designation of Senior Advocates Rules, 2020. The rule prescribed 45 years as a minimum age for an advocate to be eligible for the designation of a senior advocate.

A Bench headed by Chief Justice Sanjib Banerjee revealed that a committee tasked to look into the matter would furnish its report in the coming weeks.

Five lawyers filed the PIL. They asserted that the provisions ran contrary to the Supreme Court Ruling in the Indira Jaising vs Supreme Court of India and the 2018 guidelines issued thereafter by the Supreme Court (SC) regarding designation for senior advocates.

The SC guidelines ruled that the minimum eligibility requirement was about experience or standing at the Bar, and not age. It pointed out that a person with 10 years at the Bar was eligible to apply for the designation of a senior advocate. But in the case of Madras High Court, only those who fulfill the minimum age of 45 years are eligible to apply for the position of a senior advocate. In addition, he/she must have 15 years of combined experience as an advocate or as a District and Sessions Judge, or as a Judicial Member of a Tribunal.

Importantly, the other courts in the country have adopted 10 years of experience (or standing at the Bar) as one of the eligibility criteria instead of a minimum age/experience condition.

The PIL stated that the Madras High Court rules be tweaked so that advocates worthy of being designated as senior are not ignored or treated differently from others in the rest of the country.

The Tamil Nadu Advocates Association and the Bar Council of India were among those who flagged these concerns last year.

https://www.legaleraonline.com/from-the-courts/pil-in-madras-high-court-against-age-and-experience-782868

MADRAS HIGH COURT RULES IN FAVOR OF BHARAT MATRIMONY

Bharat Matrimony wins trademark infringement case against Silicon Valley Infomedia

The Madras High Court has ruled in favor of Bharat Matrimony (bharatmatrimony.com), an online matrimony service, in a trademark infringement suit filed against Silicon Valley Infomedia Private Limited.

The plaintiff (Bharat Matrimony) had informed the Court that the defendant (SVI) had deceptively been using the former's trademark to redirect internet traffic to its website (www.siliconinfo.com). It complained that SVI had used a similar style and trademark to mislead the potential clients to register on its website instead of the original one.

While delivering the judgment, Justice Dr G Jayachandran said that SVI had been taking unfair advantage of the goodwill that Bharat Matrimony enjoyed in the field of establishing marriage alliances online.

The Court said that SVI had wrongfully adopted the domain name www.bharatmatrimony.org and despite being given the opportunity, no justification was forthcoming from its side.

The Court directed SVI to submit all materials pertaining to matrimonial alliances to Bharat

Matrimony. However, it did not award any damages to the plaintiff due to a lack of evidence that it had profited from the trademark use.

Founded by Murugavel Janakiraman, Bharat Matrimony has been in the business since 1997 and its trademark was registered in 2006.

Interestingly, Janakiraman had met his wife through his own website. Apart from India, the company has offices in Dubai, Sri Lanka, the United States and Malaysia.

https://www.legaleraonline.com/from-the-courts/madras-high-court-rules-in-favour-of-bharat-matrimony-782339

United Kingdom

DWF ANNOUNCES RIYADH AS ITS REGIONAL HEADQUARTERS

UK's award-winning law firm unveils new legal alliance

Davies Wallis Foyster, abbreviated to DWF in 2007, has reshuffled its operations in the Middle East by announcing the creation of a regional headquarters for its business services arms in Riyadh. It has also formed an alliance with local law firm Al-Ohaly & Partners to boost its legal division in Saudi Arabia.

The Riyadh office becomes the Manchester-based firm's third in the region, adding to its existing presence in Doha and Dubai. It is a part of the Kingdom's push to become a regional commercial hub under the Future Investment Initiative by licensing 44 international companies, including DWF, to open regional headquarters in Riyadh.

Terming the deal as a step forward, DWF's CEO, Sir Nigel Knowles said the firm would build its presence in the Kingdom of Saudi Arabia to not only support the government, but also the business community as a trusted advisor."

DWF Arabia and Al-Ohaly & Partners would work closely with DWF's existing teams in Doha and Dubai as well as its wider international network to expand its local footprint, he added.

Under the new plan, the Riyadh office will house the firm's business services divisions, Mindcrest and Connected Services, as DWF Arabia.

Mohab Khattab, who joined the firm as CEO, will lead the new entity. Khattab served as general counsel of the Saudi Arabian Industrial Investments Company. Having over two decades of experience as a lawyer and business development executive, his fields of practice are - the energy, financial services and telecommunications, media and technology (TMT) sectors.

Meanwhile, DWF's legal services division will operate in Riyadh through a tie-up with Al-Ohaly & Partners, led by former Clyde & Co associate Abdulrahman Al-Ohaly. The firm will focus on advising local clients on dispute resolution, corporate and banking and finance matters.

https://www.legaleraonline.com/international/dwf-announces-riyadh-as-its-regional-headquarters-784451

INCE GROUP ACQUIRES CORPORATE ADVISORY BUSINESS ARDEN PARTNERS

The £10 million takeover to create a one-stop shop for investment services

The UK-listed law firm Ince Group has acquired Birmingham-based corporate advisor and stockbroker Arden Partners. The approximately £10m acquisition was announced on the London Stock Exchange (LSE).

It is yet another attempt of Ince's ongoing efforts to expand its non-legal services division. On acquiring its own corporate advisory arm, the Alternative Investment Market (AIM)-listed firm said it hoped to strengthen the development of its diversified professional services offering and accelerate the strategy of developing corporate finance services.

Donald Brown, CEO of Arden, said being part of a more diversified entity, the deal was an "important strategic development," as it cemented the company's ability to provide a wider range of services and gain access to a larger client base." Adrian Biles, CEO of Ince Group described the deal as one borne from client need and founded on a set of shared commercial cultural values and mutual respect. He said the company's UK and overseas clients hoped to streamline their advisory relationships whilst being able to access the London capital markets.

Arden, which like Ince is listed on the LSE's growth market, AIM and has counted the law firm as one of its clients since 2017, mainly

offers corporate finance and advisory services for public companies. Arden shareholders will now own approximately 21.6 per cent of Ince's share capital.

Arden will also gain access to Ince's resources and clients across its international network, which includes 14 offices across Europe, Asia Pacific, the Middle East and Africa. Meanwhile, Ince is set to benefit from Arden's sectoral coverage across the oil and gas, renewables and healthcare industries. The deal comes on the heels of the firm rebranding its corporate finance advisory arm, James Stocks & Co, as Ince Corporate Finance.

https://www.legaleraonline.com/international/ince-group-acquires-corporate-advisory-business-arden-partners-784543

LINKLATERS PARTNERS WITH SOFTBANK

Diversity-led accelerator program to be the key focus

UK's Magic Circle firm Linklaters has become a strategic partner on SoftBank's Vision Fund Emerge 2021 program. It intends to promote diversity in technology by supporting under-represented startup founders.

The Japanese conglomerate's Vision Fund is the world's largest technology investor, with over $100 billion of capital, and investments ranging from early-stage startups to established giants like Uber and ByteDance.

The Emerge program began in Europe this year following its launch in the US last summer. It offers founders capital, tools and a network to help them scale their business. Nine European start-ups have been selected for this year, each with at least one founder identifying as a non-white, a female, an LGBTQ+, and a disabled/or a refugee.

The unit's founders will take part in an eight-week program with mentoring and training from European venture capitals, including SoftBank Investment Advisers (SBIA), Speedinvest, Breega, Cherry Ventures, Firstminute Capital and Kindred. The topics would include hiring, culture and engaging with investors.

Founders will also receive access to SBIA and partner funds' operating professionals and will network with other entrepreneurs from across SoftBank's ecosystem of more than 300 technology-led companies.

The start-ups will receive technical advise and insight from Linklaters, which will work with the founders to provide a framework to address legal and commercial issues relevant to their business in the early stage of development. This will enable them to tap into the Linklaters' experience and access its resources.

Among those heading Linklaters' role in the program are Alexandra Beidas, partner and global head of employment and incentives, and corporate partners Stuart Bedford and Lisa Chang.

Beidas commented: "We are excited to be taking tangible action to create a more equitable ecosystem for the wealth of the under-represented talent and ensuring that marginalized entrepreneurs get access to the tools and required backing. We look forward to working with such an impressive cohort of founders with the potential to be major disruptors in established markets and supporting them in their journey."

The group is made up of start-ups in industries ranging from med-tech and financial services to life insurance. It includes a business attempting to build open finance rails for Africa's digital economy.

The program will culminate with an event in December when companies will pitch to a group of European investors to secure further funding in addition to the capital raised through Emerge. In May, Linklaters announced that it had elected the global head of its corporate practice, Aedamar Comiskey, as the firm's first female senior partner in its almost 200-year history.

Comiskey's appointment followed a run of women being named to top leadership positions in prominent firms in the US and the UK.

https://www.legaleraonline.com/international/linklaters-partners-with-softbank-783564

United States

GREENSPOON MARDER LAUNCHES ADVISORY AFFILIATE GROUP

Value(s) Management and Investment group to assist companies in ESG-related space

Greenspoon Marder, a national full-service business law firm with over 200 attorneys and offices across the United States has formed an affiliate specializing in environmental, social and governance (ESG) strategies. Ranked among American Lawyer's Am Law 200, as one of the top law firms since 2015, its new associate will advise public and private companies as well as investment firms on their ESG-related operations. The Florida-based firm announced that the Value(s) Management and Investment (VMI) group will assist companies in the investment space to benefit them from managing sustainability-related operations, communications, risk management and assurances processes. Additionally, it will focus on capital allocation and attraction decisions.

VMI will primarily aim at zooming in on client's core products and services while "avoiding the often expensive and unproductive quagmire in which ESG work can often get stuck," the firm's statement read.

Sarah Teslik, the firm's partner will lead the affiliate. A seasoned expert in ESG and investor space, she focuses her practice on investment, corporate governance, sustainability reporting, investor engagement, board governance and other related matters.

Teslik maintained that VMI would set itself apart from other ESG advisory groups. Through the affiliate's "willingness and ability to tell clients what is not worth doing as well as what is essential to address," it will ensure the focus remains on high-value work products, she announced.

"We pride ourselves not just on understanding topics on a technical and granular level, but also on being able to apply that knowledge with creativity. This will enable clients to be the leaders where they wish to be," she added.

Prior to joining Greenspoon Marder, Teslik was a partner at Joele Frank Wilkinson Brimmer Katcher, a New York-based financial communications and investor relations firm.

She has served as the founding executive director of the Council of Institutional Investors. She also worked as senior vice president of public affairs, communication and governance at hydrocarbon exploration company Apache Corporation (now APA Corporation).

VMI's leadership team includes Julian Hamud, Peter Taylor, Michael Patrick and Jen Fante. Also, Australia-based governance expert Daniel Smith and London-based attorney and communications professional Jef McAllister are part of the group. Commenting on the launch, Hamud, who previously led the governance advisory company Glass Lewis' executive compensation research group said, "Governance issues were the first to gain prominence. Environmental matters followed these.

"Increasingly, companies and their investors recognize that social issues drive everything from reputational and risk exposure to recruiting and retention potential and financial sustainability. Still, several companies are unable to track and analyze these metrics and opportunities."

https://www.legaleraonline.com/international/greenspoon-marder-launches-advisory-affiliate-group-782855

BOOST FOR GIBSON DUNN & CRUTCHER

Three-member team joins the law firm that advises clients on significant transactions around the world

Gibson Dunn & Crutcher, one of the top 15 US-based legal services firms, has boosted its private equity and mergers and acquisitions (M&A) capabilities in London. This happened as a result of a trio of partner-level hires from its rival Vinson & Elkins (V&E).

Amid a booming market for corporate and private equity lateral hires, Federico Fruhbeck will serve as Gibson Dunn's Europe head of private equity. He comes aboard with Robert Dixon and counsel Alice Brogi.

Jeremy Kenley, Gibson London's corporate transactional partner praised the trio's, "impressive deal sheets and strong top-tier client relationships." He said they aligned closely with the firm's private equity real estate practice in London.

These are the latest in the flurry of corporate M&A hires in London, hitting a record high in the third quarter. It accounted for almost a fifth of M&A activity over that period, according to the data supplied by Refinitiv, an American-British global provider of financial market data and infrastructure.

(Earlier, Kirkland & Ellis hired private equity partners Vincent Bergin and Keir MacLennan from Freshfields Bruckhaus Deringer in London. Prior to that, White & Case hired three private equity partners from its US rival Dechert).

The Gibson hires replenish the M&A capabilities of the Los Angeles-based firm's London corporate practice. The firm said the V&E trio would continue to focus on cross-border M&A, particularly infrastructure, environmental, social and governance and real assets transactions for both private equity and corporate clients.

The team is active in a number of sectors including energy transition, transportation, telecoms, shipping and building materials, and also advises on global impact and climate change-related investments.

Barbara Becker, chairperson and managing partner of Gibson, said she was "delighted" to welcome the trio to the firm, adding: "Growing the transactional practice in London and beyond is a strategic focus for us. The addition of these seasoned-deal lawyers expands our ability to develop the private equity infrastructure work we are handling in London, New York and Asia. It also deepens our broader private equity M&A practice globally."

Fruhbeck joined the Houston-based firm as a counsel in 2017 from the London office of Simpson Thacher & Bartlett, becoming a partner the next year. His practice focuses on cross-border M&A transactions across Europe for private equity clients and large family-owned conglomerates. He has long-standing experience in the infrastructure and real assets industries. Legal Week named him as one of 25 private equity rising stars in London in 2020.

Dixon is a V&E veteran, having joined the firm in 2009 from Slaughter and May and making partner three years later. He advises private equity and corporate clients on M&A and equity investments, with a focus on cross-border M&A infrastructure transactions.

Brogi served as a counsel during her five years at V&E, having previously worked as an associate at Cadwalader Wickersham & Taft in London. She advises clients on matters including domestic and cross-border acquisitions, preferred equity and debt investments, joint ventures and portfolio acquisitions in the UK and across Europe.

https://www.legaleraonline.com/international/boost-for-gibson-dunn-crutcher-783550

MAYER BROWN FACES BOYCOTT CALLS

Global law firm accused of bowing to international pressure over Tiananmen Square statue

Former chief executive Leung Chun-ying has called for a China-wide boycott of the US law firm Mayer Brown (MB). The announcement came after the latter declared it would no longer assist its longtime client, the University of Hong Kong (UHK), in efforts to remove a monument commemorating the Tiananmen Square massacre.

In a Facebook post, Chun-ying claimed the law firm had bowed to "American and European political pressure" after facing criticism over its original decision to take on the UHK's case.

"Hong Kong has a welcoming policy for foreign law firms. But no law firm, having taken on an instruction, should cease to act for its client because of foreign political pressure," Leung wrote. "From here on, no client in Hong Kong or Mainland China, particularly those with Chinese government connections, will find Mayer Brown dependable," he added.

Chung-ying served as Hong Kong's chief executive between 2012 and 2017 and currently works as the vice-chairman of Beijing's legislative consulting body.

The leader challenged MB to release a full account of its stand and details of the "foreign interventions leading to that decision." He asked the Hong Kong Law Society to launch an investigation into the matter.

On the other hand, the Law Society president C M Chan condemned any attempt to harass law firms or lawyers "because they happen to represent parties with different political views."

In a circular, Chan mentioned, "As a legal representative having accepted instructions from a client, the solicitor is under a duty to act in the best interest of the client and to provide a proper standard of service."

The controversy erupted early this month when a letter by MB, on behalf of its client, was made public. It called for the removal of the artwork. The firm had written to the Hong Kong Alliance in Support of Patriotic Democratic Movements of China (now disbanded), setting a deadline of 13 October, after which the statue would be deemed 'abandoned.'

News of MB's role in seeking the statue's removal sparked an open letter from dozens of NGOs across the world calling on the firm to withdraw its representation.

Classified as the 'Pillar of Shame', the 26-foot-high sculpture by Danish artist Jens Glaschiøt was erected in 1997. Known to be the only major memorial to the Tiananmen Square massacre remaining on Chinese soil, it stands in Pok Fu Lam, a residential area in Hong Kong Island.

Tony Williams, principal of Jomati Consultants, UK's leading legal management consultancy firm, said the controversy reflected the "very difficult position" faced by international law firms in Hong Kong. This was particularly so when choosing to take on cases relating to the protest movement or Beijing's national security law imposed on the city last summer.

"In these circumstances, it is hardly surprising that law firms are considering very carefully who they act for and what they act for," he stressed. "It clearly demonstrates the challenges the global organizations face when operating in a myriad of locations with different sensitivities, especially when social media can turn a difficult decision into a media storm within hours," he added.

In an unprecedented move, in March, China had imposed sanctions on London's Essex Court Chambers in retaliation for a legal opinion published by four of its tenants on the treatment of the Uighur Muslim minority group in Xinjiang.

https://www.legaleraonline.com/international/mayer-brown-faces-boycott-calls-783541

KOCHHAR & CO ADVISED TECH MAHINDRA

Strategic acquisition to help Indian technology giant

One of India's leading and largest corporate law firms Kochhar & Co advised Tech Mahindra in the acquisition that will help the latter augment expertise in the global pharmaceutical, healthcare and life sciences sectors.

Tech Mahindra has acquired 70 per cent stake in Perigord Asset Holdings Limited, a digital workflow and artwork, labeling and BPO services firm.

The operation was led by partner Sarika Raichur and supported by senior associate Sidhartha Jatar. Perigold was guided by RNC Legal.

As per the formal announcement, Tech Mahindra is expected to leverage Perigord's expertise and offerings to extend its capabilities towards delivering efficiency and automation levers across sectors. It will enable growth and scalability in the future.

The acquisition is a part of Tech Mahindra's long-term plan to build a presence across key markets nationally and internationally including in Ireland, Germany and the US, with enhanced global delivery.

DUA ASSOCIATES ADVISED LEADING DESIGNER BRAND RITU KUMAR AS RELIANCE RETAIL ACQUIRES MAJORITY STAKE IN RITU KUMAR COMPANY

Reliance Retail Ventures Ltd (RRVL) acquired a majority stake in fashion designer Ritu Kumar's Ritika Pvt. Ltd. Dua Associates advised leading designer Ritu Kumar & her firm Ritika Private Limited for the equity acquisition transaction between Ritika Private Limited and Reliance Retail

The transaction was led by Partners Sita Khosla and Nirvaan Gupta who acted as legal advisors and counsel to Ritika Private Limited - the firm owned by one of India's oldest and most highly regarded fashion designers, Ritu Kumar, and the Promoters (namely, their family), in the 52% equity acquisition by Reliance Retail.

RRVL makes strong moves while taking over four fashion brands in a short span. RRVL acquires Everstone's 35% stake in Ritu Kumar's company. Reliance Retail Ventures Limited was advised by Khaitan & Co and Everstone Capital was advised by Starlaw.

This deal is significant of India's oldest design house impeccable crafting of the company's design and fashion legal story.

About Dua Associates : Dua Associates is a leading law firm in India with a thirty five year old track record of delivering critical legal solutions for its

clients including Fortune 500 companies, financial institutions, governments and SMEs. The Firm is widely recognized for the depth of experienced legal talent and the significant experience of its 250+ professionals including 78 partners.

In January, Aditya Birla Fashion and Retail acquired 51% in Sabyasachi Mukherjee's fashion house for about ₹398 crore, followed by a 33.5% stake in Tarun Tahiliani's couture label in February for ₹67 crore.

In a July 2019 interview, Amrish Kumar, director at the fashion house and designer Ritu Kumar's son, said that the company, one of India's oldest designers, was looking to raise money and that Everstone was looking for an exit.

Over the years, the legacy couturier, Ritu Kumar, 76, who started the company in 1969, has set up several new brands across categories. Besides the flagship label Ritu Kumar-which sells daily and semi-formal ethnic wear-it launched Ri. Ritu Kumar, a premium bridal and formal wear in 2018. 'Label by Ritu Kumar', a designer brand for young urban India, was launched in 2002. An everyday clothing brand Aarké was launched in March this year. With its four fashion labels, the company has about 151 points of sales in India and abroad.

https://www.legaleraonline.com/deal-street/dua-associates-advised-leading-designer-brand-ritu-kumar-as-reliance-retail-acquires-majority-stake-in-ritu-kumar-company-783364

NORWEST VENTURE PARTNERS ACQUIRE 17.78% STAKE IN UMMEED HOUSING FINANCE ADVISED BY SHARDUL AMARCHAND MANGALDAS

Shardul Amarchand Mangaldas advised Norwest Venture Partners on its acquisition of 17.78% stake in Ummeed Housing Finance Pvt. Ltd. ("Ummeed") consisting of a combination of primary investment and secondary acquisition.

The transaction team was led by Puja Sondhi, Partner; Nivedita Tiwari, Partner; Nandini Seth, Principal Associate; Shambhawi Mishra, Senior Associate; and Meghna De, Associate. The due diligence team was led by Kanishk, Partner; Sumant Prashant, Principal Associate; Pooja Thomas, Senior Associate; Anshul Chhirang, Associate; Gayathri Subramaniam, Associate; Kanika Mittal, Associate; and Simant Satapathy, Associate. The closing team was led by Aakanksha Dalal, Senior Associate; Meghna De, Associate; and Paavani Gupta, Associate. Lok Capital Growth Fund, one of the sellers, was advised by Amit Khansaheb, Partner.

AZB & Partners, Trilegal and Antares Legal advised Ummeed, NHPEA Kabru Holding B.V and Duane Park Private Limited, respectively.

https://www.legaleraonline.com/deal-street/norwest-venture-partners-acquire-1778-stake-in-ummeed-housing-finance-advised-by-shardul-amarchand-mangaldas-advised-783325

DESAI & DIWANJI ADVISED STERLING WILSON SOLAR

Deal happens by way of multi-stage transaction

Indian law firm Desai & Diwanji have advised Sterling Wilson Solar Ltd. and its promoters Shapoorji Pallonji Company and Khurshed Yazdi Daruvala on the proposed sale/dilution of their shareholding to Reliance New Energy Solar Ltd. Reliance Industries Ltd. will acquire a 40 per cent stake in Sterling Wilson Solar for a consideration of approximately ₹2,850 crores.

The deal took place by way of a multi-stage transaction involving primary investment, secondary purchase and an open offer. The team was led by partners Apurva Diwanji and Aneesh Gupte and assisted by associate partner Sameer Patel and associate Alister Sequeira.

Partners Natasha Treasurywala and Rahul Chauhan advised on certain aspects of the transaction and were assisted by associate Nikita Hora.

Reliance Industries was advised by AZB & Partners. Partners Ashwath Rau, Pranav Atit and Nikunj Maheshwari, along with senior associates Sneha Nagvekar and Dhruv Mairal, led the team. Partner Anuja Tiwari and senior associates Mallika Anand, Amoolya Khurana and Pranjal Bhattacharya advised on the projects related to the diligence aspects while partner Bharat Budholia with senior associate Shivam Jha advised on the facets of competition law.

https://www.legaleraonline.com/deal-street/desai-diwanji-advised-sterling-wilson-solar-783596

JSA ADVISED MEESHO

JSA advised Meesho on US$ 570 million C Series find raise in Meesho

Represented by Manvinder Singh (lead partner), Anant Mishra (senior associate) and Vishakha Singh (associate) J. Sagar Associates (JSA) has advised B Capital, a multi-stage global investment firm that partners with exceptional entrepreneurs.

The investment is related to Meesho Inc., a company associated with mobile applications In India. Engaged in the business of operating the website www.meesho.com, Meesho facilitates the sale and purchase of goods between the suppliers and buyers/resellers. This is done through its subsidiaries Fashnear Technologies Private Limited, Meesho Payments Private Limited and Popshop Commerce Private Limited.

The total amount raised by the Company in the initial round was approximately US$ 570 million. The investment also saw participation from other marquee investors.

Meesho has more than doubled its valuation in less than six months. With about 80 per cent of resellers on the platform being women, Meesho

aims to help women start their business without the need for any capital. It intends to use the capital to double down on its research and development (R&D) teams and acquire more users.

Aiming to reach 100 million monthly transacting users by December 2022, the fundraising was a part of a strategic transaction for the expansion of the company and the benefits of its employees. The fundraising has doubled Meesho's valuation to US$ 4.9 billion.

https://www.legaleraonline.com/deal-street/jsa-advised-meesho-783009

AZB & PARTNERS HELPS BIRYANI BRAND IN RAISING GROWTH CAPITAL

Dindigul Thalappakatti brand now values at ₹860 crores

The Dindigul Thalappakatti (DT) restaurant chain that operates primarily in India's Tamil Nadu state is set for a massive expansion. It plans to further set up 25-30 restaurants and cloud kitchens in the next one year. The brand currently operates over 85 restaurants and cloud kitchens globally.

In October 2019, a conglomerate led by private equity firm CX & Partners had picked up a majority stake for ₹235 crores in the biryani brand. It was one of the largest investments in India's local restaurant chain brand. DT was then valued at ₹450 crores.

Assisted by corporate law firm AZB & Partners, this round of investment will enable DT to fast-track its growth plans. Its focus markets include Kerala, Andhra Pradesh, Telangana, Karnataka and Sri Lanka.

Tree Line Investment Management led the funding, along with other private and public individual investors, including the Havells Group.

AZB & PARTNERS
ADVOCATES & SOLICITORS

The restaurant's roots date back to 1957 when Nagasamy Naidu founded the first outlet under the name Anandha Vilas Biryani Hotel in Dindigul, a city in Tamil Nadu. Naidu always wore a thalapa (a traditional head dress or turban). Over the years, the name of the city and the turban became synonymous with the biryani brand.

https://www.legaleraonline.com/deal-street/azb-partners-helps-biryani-brand-in-raising-growth-capital-782564

ANAND AND ANAND FORGE A NEW ALLIANCE WITH NAIK & NAIK TO FORM 'ANAND AND NAIK' IN MUMBAI

Anand and Anand has forged new ties through its Mumbai practice with Naik Naik & Co to form a new entity christened Anand and Naik.

Led by founders of the respective firms Pravin Anand, Safir Anand, and Ameet Naik, Anand and Naik will be a cross-border, integrated, and multi-disciplinary practice.

Ameet Naik will be firm's Managing Partner. He will manage the practice and head the operations of the firm. Anand and Anand will nominate one of its lead partners to co-head the practice.

Anand and Naik will specialise in corporate commercial litigation, international commercial arbitration, corporate transactional practice, and intellectual property rights. The aim is to create a national and international litigation practice enabling it to represent clients in domestic and international arbitration.

The firm will also focus on industries disrupted by technology, especially in the media and entertainment sectors. They will render services in intellectual property, data protection, fashion, films, advertising, and social media, with a special bent towards emerging technologies such as OTT, broadcasting, digital media, the internet, and convergence. Tech-based hybrid areas such as FinTech, EdTech, AgriTech, and HealthTech will be in focus too.

This development comes close at heels with Anand and Anand parting ways with Khimani & Associates.

Here's what the three founders of Anand and Naik have to say on how the collaboration was a perfect blend.

"Ameet is an acclaimed corporate commercial litigator in the country. He is also one of the leading lawyers in the media and entertainment space, globally, with extensive experience in the sector and some great contentious work to his credit. Together, we are set to amplify our presence, both in domestic and cross-border litigation. We will focus on fresh thinking and creative solutions well-suited to address the biggest and most complex

Pravin Anand, Ameet Naik & Safir Anand

cases, especially in the times of virtual hearings and with substantial reliance on electronic data and technology."

Pravin Anand, Managing Partner, Anand and Anand

"Our vision is grand. This synergy will set a benchmark for not just our transactional IP practice, but also in extremely specialized areas such as digital asset management, information & data, content, currencies and online reputation. Ameet has an impressive repertoire of work in top-level strategic advisory and handling big-ticket corporate transactions. With his corporate expertise, we will be a leading team of experts advising on strategically significant agreements and transactions across the globe. Expansion of our client base and operations to more locations, within and outside India, is also on cards."

Safir Anand, Senior Partner, Anand and Anand

"While Mr. Pravin Anand is undoubtedly an icon who has contributed towards strengthening India's IP jurisprudence, Safir's practice is extremely niche and unconventional. At Naik Naik and Co., we have a dynamic blend of the conventional and unconventional. This collaboration is, therefore, the perfect blend of insightful vintage litigation practice and refreshingly dynamic expertise that has evolved with time...

We each have a strong and well-established foothold in Delhi and Mumbai respectively and the collaboration will allow each of us access

to the other's dominant presence...With this collaboration, we will create one of the largest litigation and dispute resolution practice in the country, that will focus on high-profile, high-stake and nuanced contentious matters across all forums and allow us to further our domestic and international commercial arbitration practice."

- **Ameet Naik, Founder & Managing Partner, Naik Naik & Co**

Bithika Anand, Founder and CEO of Legal League Consulting, advised on and facilitated the synergy, along with her colleague Nipun Bhatia, President – Strategic Legal Management.

LAKSHMIKUMARAN AND SRIDHARAN ADVISED LIFECELL INTERNATIONAL ON ₹2,250 MILLION INVESTMENT BY ORBIMED ASIA

Lakshmikumaran and Sridharan (L&S) advised LifeCell International on ₹2,250 million Investment by OrbiMed Asia. LifeCell International, one of India's leading stem cell banks and reproductive diagnostic solutions provider raised ₹2,250 million from OrbiMed Asia Partners IV, a leading healthcare investment firm.

Mayur Abhaya, Managing Director, LifeCell International said "We are pleased to raise ₹2,250 million from OrbiMed Asia to support our growth initiatives through primary infusion into the company. The company is debt free and has positive operating cash flow which will also help in its own strength to support the growth."

L&S Team was led by Badri Narayanan, Executive Partner, Gaurav Dayal, Partner, Sumedha Kalra, Associate & Anmol Jain, Associate.

The transaction involved investment into the Company in the form of primary issuance of compulsorily convertible preference shares as part of this funding round undertaken by the Company. Orbimed Asia IV Mauritius Limited made a primary investment of ₹2,250 million. In addition, the Promoters have also committed to invest ₹300 million into the Company.

L&S was involved in the review and finalization

of the term sheet and transaction documents, shareholders agreement, share subscription agreement, employment agreement, articles of association and closing resolutions.

In addition, L&S was also involved in the structuring and drafting of the documentation for the reorganization of the storage business.

Ernst & Young LLP acted as the investment banking to the company. IndusLaw advised the Investors.

https://www.legaleraonline.com/deal-street/lakshmikumaran-and-sridharan-advised-lifecell-international-on-inr-2250-million-investment-by-orbimed-asia-779832

LAKSHMIKUMARAN AND SRIDHARAN ADVISED OJI HOLDING FOR A CROSS-BORDER ACQUISITION

Lakshmikumaran and Sridharan (L&S) has recently concluded a significant Corporate Advisory and M&A transaction wherein the firm assisted Japanese listed company Oji Holding Corporation, a global leader in paper and packaging industry to acquire 80% equity stake in Punjab-based Empire Packages Private Limited.

This transaction was led by Sudish Sharma, Executive Partner, Corporate Advisory and M&A practice at L&S along with his team of experts which included Apeksha Bansal (Principal Associate), Sonali Srivastava (Associate), Vidhi Madan (Associate) and Pratham Soni (Associate).

Speaking on the deal, Sudish said "Foreign companies are viewing India as a lucrative investment option. This will ensure the growth of our domestic market manifolds. L&S is closely associated with numerous companies for advising and assisting in such cross-border transactions that brings added value to our economy."

Oji Holding Corporation expand their vision in India. This deal shall provide them access to the paper and packaging industry in the country.

L&S advised Oji Holding Corporation with legal due diligence of Empire, cross-border regulatory aspects, execution, and negotiation of transaction documents.

This deal is significant cross-border acquisition that keeps innovation and environmental sustainability at its core.

https://www.legaleraonline.com/deal-street/lakshmikumaran-and-sridharan-advised-oji-holding-for-a-cross-border-acquisition-779814

DSK LEGAL ADVISED GLAMYO TECHNOLOGIES

DSK Legal represented Glamyo Technologies Private Limited ("Glamyo") in its investment round led by Anant Capital, Udtara Techinvest LLP, COD9 Advisors LLP and other investors ("Investors") in Glamyo.

Glamyo is a health tech startup engaged in providing multi-specialty healthcare services in India and delivering a hassle-free experience for all elective surgeries & cosmetic procedures with personalized care.

DSK Legal assisted Glamyo in inter alia with: (i) drafting, reviewing, negotiating, and finalizing the share subscription and shareholders agreement executed with the Investors and other ancillary documents relating thereto; and (ii) assisting in execution and closing of the transaction.

The DSK Legal team representing Glamyo comprised of Mr. Nakul Batra (Associate Partner), Mr. Chirag Jain (Principal Associate) and Mr. Kunal Garg (Associate).

Mr. Rishi Anand (Partner) acted as the engagement partner and provided strategic inputs on the transaction. The transaction value is USD 3 million.

https://www.legaleraonline.com/deal-street/dsk-legal-advised-glamyo-technologies-779614

RADHIKA SHAH JOINS SANOFI

Radhika Shah joins SANOFI as a Company Secretary & Compliance Officer.

Radhika has over 18 years of rich experience in Legal and Corporate Secretarial fields. Radhika has worked for more than 16 years with Asian Paints Limited, India's leading Paints & Décor Company.

At Asian Paints, Radhika spearheaded the Corporate Secretarial and Compliance functions including handling Corporate Governance matters. She was also responsible for Anti-trust compliance & litigation and was actively involved in Mergers & Acquisitions.

Prior to Asian Paints Limited, she worked briefly with the Reliance group.

Radhika is a gold-medalist & member of the Institute of Company Secretaries of India (ICSI) and holds a degree in Law and Commerce.

DLA PIPER'S BRAZIL AFFILIATE HIRES A TEAM OF LAWYERS FROM MAYER BROWN

The move comes in wake of clients' demand for expertise in the energy sector

DLA Piper's Brazil affiliate, Campos Mello Advogados (CMA), has hired a five-lawyer team from Mayer Brown's Brazil associate Tauil & Chequer Advogados. This was done to boost its litigation and arbitration offerings related to oil and gas, maritime, sustainability and environmental issues.

DLA Piper's Americas chair stated, "We have been working with our Latin America and Brazil leaders and clients to identify the key areas where we need to respond to the marketplace demands."

He added that the hires reflected the firm's wider commitment to "meet the most critical needs: of clients acting in the global marketplace, particularly within the energy industry.

Even as the four partners - Alexandre Calmon, Marcelo Frazao, Paulo de Bessa Antumes and

Vilmar Gonsalves join CMA's office in Rio de Janeiro, senior associate Joao Marcal Martins moves across to shore up the firm's litigation and arbitration bench in São Paulo.

Welcoming the new entrants, CMA's managing partner, Fabio Campos Mello listed, "We wanted a

team with a focus on the high-demand parts of the practice, particularly in the energy, infrastructure and environmental sectors. We know our clients are attentive to environmental, social and corporate governance. These additions will expand our capabilities even further."

Calmon is moving to CMA after a three-year stint at Tauli & Chequer (T&C). A recognized leader in the Brazilian oil and gas sector, his focus of practice is acquisitions of oil and gas production assets and the development of domestic energy products.

On the other hand, after working for four years at T&C, Frazo brings with him a wealth of experience in the field of mergers and acquisitions, finance and energy projects involving maritime and offshore works.

Meanwhile, Antumes and Gonsalves specialize in environmental law. Their focus will be to advance CMA's environmental, social and governance mechanism.

Prior to joining T&C, Antunes spent three decades as a regional prosecutor at the Brazilian Federal Prosecution Office and headed the Secretariat of Environmental Protection of Rio de Janeiro state's legal team.

Gonsalves handles dispute resolutions and environment crisis management and consultancy matters for clients across a wide range of industries. He will serve as an active member of DLA Piper's Latin America regional practice group, in addition to his work with CMA's international arbitration team.

CMA joined DLA Piper's international network way back in 2010. Currently, it has over 30 partners and 230 professionals working across 22 practice areas in Rio de Janeiro, São Paulo, Brasilia, New York, London and Miami.

FIELDFISHER ANNOUNCES NEW MANAGING PARTNER

Robert Shooter to take over from Michael Chissick in 2022

Fieldfisher, the multinational law firm headquartered in London, United Kingdom, has announced a successor to Michael Chissick, the firm's long-standing managing partner.

Tech-expert lawyer Robert Shooter will take over on 1 May 2022, ending Chissick's decade-long role in one of the UK's top 30 firms.

Describing his elevation as "an honor", Shooter said, "It has been fantastic working with Michael. I am now looking forward to leading the firm into a new era of working with clients and colleagues through a period of further collaboration, integration and growth."

He further stated, "It will be an interesting time for the legal industry as client needs continue to evolve. I am confident that Fieldfisher will rise to the challenge and build on the strong foundations established under Michael's leadership."

Shooter presently heads Fieldfisher's outsourcing and privacy practice fields. He also leads the technology sector team and is a member of its executive committee.

He joined the firm in 2002 and became a partner four years later. His practice focuses on acting for suppliers and customers in the commercial tech space. The firm maintains that Shooter is expected to retain client relationships while carrying out his new role.

Of his successor, Chissick commented, "The firm is in good hands with Rob. It has been a privilege to lead the firm through an exceptional period of growth, but it is now time to hand over the reins to the next generation to define the next phase of the firm's development.

"I have no doubt that the ambition, talent and energy we have at the firm will ensure that Fieldfisher will continue to grow and prosper under Rob's leadership."

Chissick had joined Fieldfisher in 1995 as head of the technology and outsourcing branch. Earlier, he performed the role of a partner at legacy firm Hopkins & Wood. Prior to that, he worked as an associate at Herbert Smith Freehills.

At Fisherfield, he oversaw a period of significant expansion, which since the beginning of his tenure as managing partner in 2012 witnessed the turnover rise from £95m to £290m. The firm reported its eighth consecutive year of growth in July, posting a 22 per cent increase in profit per partner to £860,000.

Over the past few years, Fisherfield has expanded its operations in several countries including Spain, Germany, Belgium and China.

DSK LEGAL PROMOTES AVINASH KUMAR KHARD, PARAG KHANDHAR, SAMIT SHUKLA & EKTA TYAGI

DSK Legal has promoted Associate Partners Avinash Kumar Khard, Parag Khandhar and Samit Shukla as partners, & Principal Associate Ekta Tyagi to Associate Partner.

Commenting on the promotions, Managing Partner, Mr Anand Desai said,
"I am delighted to see our colleagues grow and add to our partnership. We are fortunate to have an increasing number of lawyers who believe in, and adhere to what we stand for as a firm."

The Firm now has 24 Partners and 11 Associate Partners across its offices in Mumbai, New Delhi, Bengaluru and Pune.

Avinash Kumar Khard is in the Firm's Banking & Finance and Energy, Projects and Infrastructure team, and has significant experience in representing various private and public sector companies and undertakings, public sector and private banks, foreign lenders, non-banking finance companies, borrowers, bidders and institutions for financing, construction, operation and acquisition of capital-intensive projects and facilities around Asia, Middle East and Africa.

Parag Khandhar has rich experience in handling various kinds of dispute resolution matters, including corporate litigation, media litigation, domestic arbitrations, and quasi criminal matters,

before various Courts/Tribunals across the country. Samit Shukla has rich experience in advising a host of clients across a wide range of commercial disputes, including relating to real estate, corporate, infrastructure, environment, securities and private equity. He has been involved in several high-profile corporate disputes, including leveraged buyout transactions & exits.

Ekta Tyagi joined DSK Legal in 2018 transitioning to disputes work after acquiring extensive corporate law experience in a couple of other leading Indian law firms. She advises on commercial litigation and pre-litigation strategy, and criminal law matters, including fraud investigations.

KING STUBB & KASIVA (KSK) HIRES PARTNERS TO EXPAND SERVICES IN NEW DELHI, BENGALURU AND MUMBAI

KSK (King Stubb & Kasiva), hires Prashant Kataria, Gaurav Dudeja, Apoorva Chandra and Sameer Singh as partners to expand service offerings in New Delhi, Bengaluru and Mumbai office.

With a strong focus on growth, KSK, India's leading full-service law firm, has announced the appointment.

Jidesh Kumar, Managing Partner, King Stubb & Kasiva, said "We are delighted to welcome Prashant, Gaurav, Apoorva and Sameer into the KSK family. Given their extensive experience in their respective practice areas, they are right professionals to strengthen our practice and assist our clients to ensure that they receive the same cutting edge legal skills, industry expertise and seamless experience that we offer all our clients across our offices in New Delhi, Mumbai, Bengaluru, Chennai, Hyderabad and Kochi. We are in the process of hiring more professionals across India with a vision to build KSK as the platform for equitable growth, legal excellence, sustainable continuity and promoting entrepreneurship across all practice areas in India."

Prashant Kataria joins to spearhead the firms's VC & PE practice in the country. Prashant is widely recognized as the leading expert on Indian venture capital and private equity investment transactions.

Prashant will be the new Head, VC and PE practice, and he will be based in Bengaluru. He formerly worked for Nishith Desai, Lexygen, and Algo Legal, among other illustrious firms. He is an alumnus of NLSIU, Bengaluru, and has worked and lived in both India and Singapore.

"It's an excellent opportunity to be a part of this prestigious firm. With my experience in corporate practice techniques with a focus on VC and PE, I'm excited to help the firm expand its corporate law practice and reach new heights in the field," Prashant stated.

Sameer Singh joins to be part of the Firm's litigation and dispute resolution team in Mumbai. Sameer specializes in commercial litigation and represents clients in the High Court, the NCLT, the SAT, the Civil Court, and other courts and tribunals. His prior experience in this industry includes roles at Desai & Diwanji, ALMT, and other notable firms. He is an alumnus of the ILS Law College, Pune.

"It's an honor to be a part of the KSK. I'm excited to join the team, and I firmly believe that I'll be able to bring the depth of my experience in litigation and arbitration to the table in a dynamic style. It's going to be an exciting journey!," Sameer stated.

Apoorva Chandra joins to strengthen KSK corporate practice in India. Apoorva Chandra is well regarded as a corporate law expert in India.

Apoorva Chandra specializes in mergers and acquisitions, PE/VC investments and general corporate and commercial legal matters. He was previously associated with Hariani & Co., among others. He is an alumnus of NLU, Jodhpur.

"I'm pleased to have this opportunity to work with the leaders of legal practice and to contribute what I've learned over the past few decades to the firm's progress. M&A and investment being my areas of expertise, I believe I can contribute significantly to the team's future success. I can't wait to get started!" Apoorva said.

Gaurav Dudeja joins to strengthen the litigation and dispute resolutions practice in India. Gaurav is widely regarded as an authority on commercial disputes, with a special focus on infrastructure, power, and energy sectors.

Gaurav's expertise is in the energy sector, more precisely in electricity and infrastructure, as well as in regulatory litigation and arbitration. He previously worked with JSA, DMD Advocates, among other firms. He is an alumnus of IP University, Delhi.

"I'm thrilled to join the KSK ship! As a leader and a partner, I hope to steer the firm to new heights while also broadening my horizons in anticipation of the exciting new lessons that I'll learn in my new role to strengthen and build the power sector, regulatory, energy, and infrastructure dispute resolution practice. We are a young and dynamic firm with tremendous capabilities and it's going to be an enjoyable ride," said Gaurav.

LAKSHMIKUMARAN & SRIDHARAN ELEVATES 16 TO PARTNERSHIP

Lakshmikumaran & Sridharan (L&S), one of India's leading full-service law firm, announced senior level promotions in the firm. Sixteen lawyers have been elevated to the position of Partners, while another two professionals have been promoted to Director level in the annual round of appraisals for 2020-21.

Expressing his views on the announcement, Mr. V Lakshmikumaran, Managing Partner, Lakshmikumaran & Sridharan, said, "I congratulate all of them. These elevations have been done based on strict performance evaluation by our committee in the most transparent and unbiased manner to recognize the relentless efforts by these professionals towards growth of the organization as well as their individual growth. Our people-first approach drives us to create a growth mindset within the firm that inspires individuals to achieve organizational excellence. I am sure that they will be able to shoulder more responsibilities befitting their senior position in L&S. I wish them all the very best."

The newly promoted Partners/Directors at L&S, bring over a decade of experience each and exhibit passion, commitment, integrity, and mentorship aligned with the vision of the firm. The said promotions are effective from 1st October 2021.

Sr. No.	Name	Practice Area	Office Location	Elevated to
1	Hemant Krishna	Corporate and M&A	Bengaluru	Partner
2	Kunal Arora	Corporate and M&A	New Delhi	Partner
3	Sriram S	Direct Tax	Mumbai	Partner
4	Jyoti Arora	Direct Tax	New Delhi	Partner
5	Syed Maqdum Peeran	Indirect Tax	Bengaluru	Partner
6	Krati Singh	Indirect Tax	Chandigarh	Partner
7	Rahul S Jain	Indirect Tax	Chennai	Partner
8	Narendra S Dave	Indirect Tax	Hyderabad	Partner
9	Rahul Tangri	Indirect Tax	Kolkata	Partner
10	Rajesh Ostwal	Indirect Tax	Mumbai	Partner
11	Vinay Kumar Jain	Indirect Tax	Mumbai	Partner

LUMIERE LAW PARTNERS HIRES MAX'S LEGAL DIRECTOR

Atulya Sharma to head the firm's corporate law practice

Lumiere Law Partners (formerly PDS Legal) has hired Atulya Sharma, group general counsel & director (legal) at Max Healthcare as a partner in its corporate law practice.

Sharma will advise clients on all aspects of corporate commercial laws, regulatory matters, arbitration and litigation, and focus on structured finance, project finance, equity and debt capital markets, restructuring, insolvency and bankruptcy, healthcare, infrastructure and mergers and acquisitions.

Welcoming Sharma to the firm, Probal Bhaduri, managing partner of Lumiere said, "His significant and breadth of experiences will further strengthen our capabilities and offerings to serve our clients. I wish him the best and look forward to a great journey together."

To this, Sharma remarked, "I am delighted to join Lumiere. I look forward to working with colleagues across the firm's practices to assist clients to navigate complex legal and regulatory issues."

Lumiere is a full-service law firm with offices in Delhi, NCR, Mumbai and Bengaluru. With this development, it has eight partners and over 70 lawyers in its fold.

Of late, several senior lawyers have switched to or have set up their own law firms.

Speaking of the trend, Pretiek Parikh, an independent legal recruiter and consultant for law firms, commented, "Since businesses are becoming

complex due to several overlapping regulations, we may see many more such movements of veteran general counsels joining law firms, especially in sectors such as technology, energy and pharmaceutical and healthcare."

Besides the hospital chain Max Healthcare, Sharma has worked as global general counsel for Apollo Tyres Group, group general counsel for Deutsche Bank AG (South Asia & Mauritius), group general counsel for IDFC First Bank and senior counsel with International Finance Corporation (World Bank's private-equity arm).

He has also worked as a senior partner at law firms Desai & Diwanji and Dua Associates.

Sharma holds an LL.B. from the Campus Law Centre, Delhi University and an LL.M. from the City University, London.

He has three decades of experience across cultures and in sectors including investment banking, manufacturing, anti-bribery and anti-corruption and corporate governance.

ABHISHEK KUMAR RETURNS TO SINGHANIA & PARTNERS AFTER A SHORT STINT AT L&L PARTNERS

After a brief stint at L&L Partners, Abhishek Kumar has returned to Singhania & Partners where he worked for 15 years.

Singhania & Partner's Kumar, who had joined L&L partners in July 2021, returned to the firm after a two-month stint at L&L Partners.

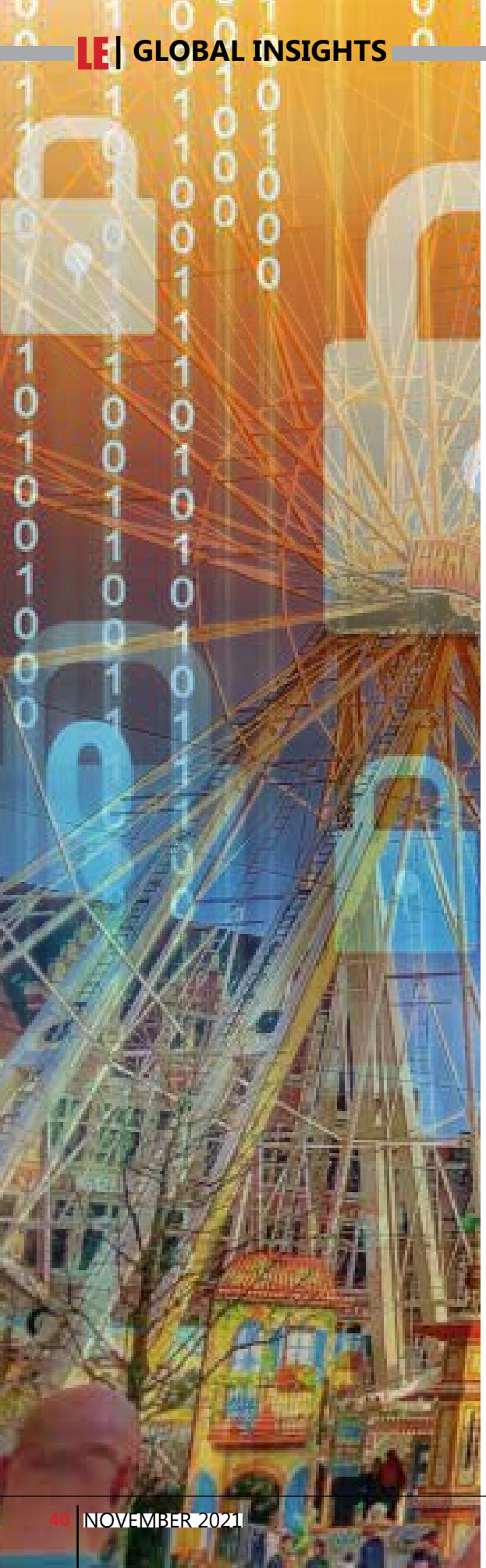
Kumar is a 2005 graduate of Symbiosis Law School and has nearly two decades' experience in litigation and has been appearing before the Supreme Court of India, High Courts, National Company Law Tribunal, Government Authorities, and other Statutory Tribunals.

On Kumar's return, S&P's Managing Partner Ravi Singhania, said,

"It is an emotional and thrilling moment for me. Abhishek was an ace lawyer who had been with us for fifteen years and had recently risen the ranks

to partnership. We are absolutely delighted to have him back!"

Kumar on his rejoining the firm, said,"It is a home coming for me, and I am excited to be back at the firm. I am looking forward to starting from where I left not so long ago. The firm has an extremely positive work-culture and familial environment which kept calling me back and here I am!"



The use of BIOMETRIC DATA at the workplace in Belgium and some neighboring countries

Over the past decade, we have seen the emergence of the use of biometrics in the workplace. The most common examples of processing activities involving biometric data are facial or voice recognition and fingerprint access systems.

More and more organizations are considering implementing biometrical technologies for authorization, authentication and security purposes (e.g. accessing work premises or tools, monitoring employees working hours, building security etc.) as it cuts down on paperwork, increases processing speeds and lowers the risk of human error. However, the use of such systems shall be carefully assessed.

Identification vs authentication (verification) purposes

The GDPR defines biometric data as personal data resulting from specific technical processing relating to physical, physiological or behavioral characteristics of individuals, which allows or confirms the unique identification of a natural person. Hence, the definition covers two possible purposes of the processing of biometric data: identification or authentication/verification of identity.

Because of its sensitive nature, a special regime exists under the GDPR which prohibits the use of biometric data for the purpose of uniquely identifying natural persons and which only provides limited room for exceptions. For example, processing is permitted when the data subject has given explicit consent to the processing, when the processing is necessary for substantial public interest or for reasons of public health.

The use of biometric data (such as fingerprints and facial recognition) is already a reality for many employers in Belgium and elsewhere in Europe. These data are given special attention under the EU General Data Protection Regulation (GDPR). This article aims to provide an overview of the current legal framework applicable to the employers in Belgium wishing to use biometric data at the workplace, as well as a quick comparison with the situation in The Netherlands, France and Germany.

THIERRY VIÉRIN
Partner

JOHAN COLLARD
Associate

Osborne Clarke

Since the special regime under the GDPR does not make any reference to the processing of biometric data for the purposes of authentication or verification (i.e. for the purpose of confirming the identity of an individual) but only refers to the processing of biometric data for the purpose of uniquely identifying a natural person, it could be argued that the prohibition to process biometric data under the GDPR applies to processing activities for identification purposes only. This would also be consistent with the fact that the use of biometric data for verification purposes is regarded as less problematic from a data protection perspective considering that verification (or authentication) does not necessarily require storage of personal data in a centralized database and typically involves the processing of data on fewer numbers of persons. The processing of biometric data for verification/authentication purposes would, however, still be subject to the general requirements of the GDPR (e.g. legal basis, information requirement, record-keeping, etc).

Use of biometric data in Belgium

There is no legal framework in Belgium which explicitly allows the processing of biometric data in the workplace.

The Belgian Supervisory Authority (the "Belgian DPA") released its draft recommendation (Draft Recommendation of 15 July 2021 for processing biometric data) on the use of biometric data, which provides guidance to data controllers and data processors on the correct application and interpretation of the applicable provisions relating to the processing of biometric data. In its draft recommendation, the Belgian DPA does not draw a distinction between the identification and authentication/verification purposes but takes the view that the processing of biometric data is prohibited under the GDPR, irrespective of the fact that such data is processed for identification or verification/authentication purposes. As a result, in Belgium, it remains unclear whether the prohibition to process biometric data relates to both purposes or to identification purposes only.

In its draft recommendation, the Belgian DPA also outlines that explicit consent (with all the GDPR requirements attached to it) is currently the only legal basis that enables the processing of biometric data because Belgian lawmakers failed to adopt a national legislation which would allow the processing of biometric data (except in the context of the eID). Thus, in its draft recommendation, the Belgian DPA is inviting the Belgian lawmakers to adopt such a legislation. Even if explicit consent constitutes one of the exceptions to the general prohibition of processing biometric data, this legal basis will often not be valid in an employer-employee relationship due to the power imbalance between an employer and an employee. It is often argued that consent cannot be freely given in such a case.

It should also be noted that under the Belgian Act of 30 July 2018 on the protection of individuals with regard to the processing of personal data, any employer which processes biometric data shall list

> **"The use of biometric systems such as face recognition or fingerprint scans in the workplace is possible but the employer must carefully assess whether these systems are used for authentication/verification or identification purposes."**

the categories of individuals having access to such data and make this list available to the supervisory authority upon request. The employer shall also ensure that those designated individuals are bound by an appropriate obligation of confidentiality.

Recommendation for Belgian employers

Since there is currently no legal framework in Belgium that allows an employer to process biometric data and as the reliance upon consent is often problematic in an employment relationship, no clarity exists as to the lawful use of biometrics in the workplace. However, it can be argued that only biometric systems that are used for the purpose of identification are subject to the general prohibition of the GDPR.

Therefore, the use of biometric systems such as face recognition or fingerprint scans in the workplace is possible but the employer must carefully assess whether these systems are used for authentication/verification or identification purposes. With regard to the former, the employer is allowed to process biometric data provided that it meets the general requirements of the GDPR (i.e. the need for a legal basis for personal data processing, transparency/information obligation, record keeping etc.). By way of illustration, a system that locally stores a fingerprint-based computer file to serve as a way of authentication and that does not reconstruct the fingerprint of the employee could fall under this regime. With regard to the latter, the employer is prohibited to process the biometrics, except if the employee has given his/her consent. However, it should be remembered that consent as a legal basis is usually not accepted, due to the power imbalance between the employer and employee. Since Belgian legislation does not provide any other legal basis for the use of biometrics for identification purposes, the employer who still wants to implement such systems must ensure that the employee's consent meets the requirements of the GDPR (i.e freely given, specific, informed and unambiguous).

Moreover, when the processing activity involves the processing of biometric data, the conduct of a data protection impact assessment ("DPIA") is highly recommended (EDPB, Guidelines on DPIA, WP 248 rev.01, see also Guidelines 3/2019 on processing of personal data through video devices).

Use of biometric data in neighboring countries

Whilst Belgium has not yet provided a legal basis to allow the processing of biometric data in the workplace, neighbouring countries such as The Netherlands, France or Germany have.

THE NETHERLANDS

The Dutch GDPR Implementation Act (Uitvoeringswet Algemene verordering gegevensbescherming: "DGIA") of 16 May 2018 contains, in addition to obtaining consent, an exception to the prohibition of processing biometric data, which applies where the processing is necessary for authentication or security purposes. In order to rely on this exception, employers should carefully consider whether the relevant building or information system requires a level of security that can only be achieved through the processing of biometrics.

Hence, the employer must prove that implementing biometric systems is both necessary for security reasons and proportionate in order to rely upon the exception provided in the DGIA. According to the

explanatory memorandum to the DGIA, the exception may only be relied upon where the buildings and information systems need to be secured in such a way that this must be done through biometric systems. The Dutch legislator clarified that the necessity and proportionality threshold is not easily reached and provides the example of a nuclear power station. The high threshold also follows from a decision of the Dutch court in which the court ruled that the use of (mandatory) fingerprint data by a retailer for security purposes was not necessary and proportionate (ruling of the Dutch court of 12 August 2019). The court argued that the retailer could have used different and less intrusive means for the privacy of employees such as access cards, employment cards and/or passwords.

In addition, the Dutch Data Protection Authority (Autoriteit Persoonsgegevens: "Dutch DPA") has recently imposed a fine of EUR 725,000 on a Dutch organization for unlawfully processing employees fingerprint data (Decision of the Dutch DPA of 4 December 2019). The organization used fingerprint scanning for time registration and administration of salaries, holidays and sick leaves. The Dutch DPA acknowledged that an organization may have an interest in using fingerprint scanning for these purposes. However, given the purpose of the processing and taking into account the business activities of the organization, the Dutch DPA concluded that the interest did not justify the processing and it was not necessary to introduce these access controls for achieving the purpose.

The Dutch DPA also argued that employers cannot use consent as a legal basis for the use of biometric systems for the purpose of controlling access to premises, applications and work tools. The GDPR requires consent to be freely given, specific, informed and unambiguous. Due to the imbalanced relationship between employer and employee, consent is generally considered not freely given. Therefore, employers (in light of the imbalanced relationship), in most cases, cannot rely on consent as a legal basis for the processing of data of employees.

FRANCE

In France, the use of biometric data is explicitly provided for by the Law "Informatique et Libertés" (Loi Informatique et Libertés of 6 January 1978). The French data protection authority ("CNIL") has published a "Model Regulation" (Délibération n°2019-001 of 10 January 2019) which specifies the ob-ligations of organisations or companies wishing to equip themselves with biometric systems for the purpose of controlling access to premises, applications and work tools. This Model Regulation aims to complete or clarify certain general obligations arising from the GDPR.

More specifically, the Model Regulation requires each organization or company to justify to the CNIL any use of biometric systems. In order to justify the deployment of such systems, the employer must identify a specific context that requires a high degree of security, and prove that no "less intrusive" means exists to that end. If the use of biometric data is justified according to the CNIL, the consent of the employee concerned is not required.

GERMANY

According to the German Federal Data Protection Act (20 November 2019) an employer may only use biometric systems in the workplace if the employee has given its consent or where this is necessary to exercise rights or comply with legal obligations derived from labor law, social security and social protection law, and the data subject has no overriding legitimate interest in not processing the data.

A recent court ruling in Germany (Higher Regional Labour Court Decision of 4 June 2020) has considered the tracking of time and attendance of employees through the use of a fingerprint-based system to be illegal, unless if exceptional circumstances make it necessary. The court ruled that less intrusive means existed in order to record working time of employees.

If the employees have elected a works council, such technical devices able to monitor the behavior or performance of the employees can only be implemented and used by the employer after undergoing the co-determination process.

Conclusion

Unlike its neighboring countries, Belgium has still to provide clarity as to the appropriate legal basis for the processing of biometric data in the workplace. However, although Germany,

France and The Netherlands have adopted rules or guidance on this matter, the possibility to use biometric systems on the workplace remains subject to a case-by-case assessment.

For an employer in Belgium, it can be argued that the implementation of biometric systems for authentication purposes only does not fall under the prohibition to process biometric data under the GDPR. Hence, the employer in Belgium which would only use a biometric system for authentication purposes only would not be subject to the protective rules for biometric data processing but only to the general requirements of the GDPR. In any case, the performance of a DPIA is, also highly recommended.

> **"When the processing activity involves the processing of biometric data, the conduct of a data protection impact assessment ("DPIA") is highly recommended."**

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Thierry heads the employment department of Osborne Clarke in Brussels. He specializes in various aspects of employment law, including restructurings, contingent workforces, termination or hiring of high-profile senior employees, negotiation with trade union representatives, cross-border employment and transfer of undertakings. Thierry has a strong local practice but also advises international companies mainly from Europe, the USA and India on law issues relating to his expertise. Most of Thierry's clients are from the Tech, Media and Comms, Retail, and Life Sciences sectors. As a specialist in workforce solutions, Thierry provides A to Z advise for recruiting and staffing businesses as they navigate the legal complexities of managing their Belgian and international workforces.

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Johan is an Associate at the employment department of Osborne Clarke in Brussels. Johan specializes in individual and collective employment law. In addition, he focuses on all aspects of social security law. Johan completed his Masters in Law from the Catholic University of Louvain. He was the recipient of the pleading prizes of the Brussels Bar. He also holds a PhD in Philosophy from Saint-Louis University in Brussels.

With the collaboration of: **Elisabeth Vleurinck**, Junior Associate Osborne Clarke

AUTOMOBILE OVER-THE-AIR TRANSMISSIONS

A GLOBAL PERSPECTIVE

Technological innovation is lifting up almost every aspect of modern life, and it will soon revolutionize the very cars we drive. Working on the same principle as iOS updates for an iPhone, over-the-air (OTA) technology allows car manufacturers to wirelessly transmit information to a vehicle. Many of whom have already incorporated software over-the-air (SOTA) technology in their vehicles to remotely update user interfaces like infotainment and navigation systems, while pioneers like Tesla and Nio have rolled out vehicles equipped with advanced FOTA (firmware over-the-air) features that can directly impact driving by delivering changes to sensors and brakes.

This article will provide a brief overview of the benefits and drawbacks of OTA technology before discussing how global authorities seek to regulate the emerging technology as a whole.

There are numerous benefits of OTA for both automobile manufacturers and consumers. Eliminating visits to dealerships by delivering remote updates would considerably reduce labor costs for manufacturers while saving time for consumers, a win-win for all parties. In addition, companies can regularly improve various features and resolve issues en masse, implementing anything from quality-of-life changes, like updating maps, to safety enhancements like increasing the responsiveness of brakes. Tesla has even improved engine performance via FOTA transmissions, augmenting battery efficiency without requiring owners to visit a dealership.

However, OTA also brings new issues and risks. The first significant problem is that of cybersecurity; Vehicles with OTA capabilities are connected to an entire network of other OTA-capable vehicles through the cloud, meaning that a successful hack can give a perpetrator access to or control over tens of thousands of vehicles.

OTA also opens the door to personal data and privacy concerns. With OTA technology, connected cars would store substantially more personal data inside their systems, such as coordinates, travel history and owner details. In addition, weather information, traffic conditions and other metadata connected cars share with their network could help identify specific car owners, posing additional threats to personal privacy, not least, hackers.

OTA safety concerns also cannot be ignored. Any glitch or error in an update could prove disastrous as its effects are amplified and compounded over an entire network of OTA-capable cars.

To address these potential pitfalls, officials around the world have introduced various rules, regulations and standards to guide OTA development and implementation. In 2020, the United Nations introduced a management system for automobile cyber security while creating a legal framework for OTA updates. Chief among these advancements is the "UN Regulation on Software Updates and Software Updates Management Systems," whose goal is to ensure that manufacturers diligently and effectively tackle any identified weaknesses in security.

Both the UN and NHTSA hone in on the safety of OTA-capable vehicles, stressing the enhancement of cyber security measures to prevent glitches and deter hackers. On the other hand, Chinese regulators prioritize accountability and oversight, creating a paper trail that incentivizes companies to conduct their OTA rollouts ethically and safely

DAVID GOH
Partner

SQUIRE PATTON BOGGS

> ***"OTA safety concerns also cannot be ignored. Any glitch or error in an update could prove disastrous as its effects are amplified and compounded over an entire network of OTA-capable cars."***

These recommendations have seen some success; Japan was among the first to implement them, with implementation in the Republic of Korea slated for later this year. In addition, the European Union has plans to introduce similar regulations between 2022 and 2024.

Despite there being no specific regulations that address automobile cyber security in the US, the National Highway Traffic Safety Administration (NHTSA) recently released an updated version of its "Cyber security Best Practices for the Safety of Modern Vehicles." It shares noticeable similarities with the UN recommendations but goes further in that it explicitly defines OTA and provides two relevant directives: requiring manufacturers to maintain the integrity of OTA updates by updating servers along with transmission mechanisms and to design their security measures with the risks of compromised servers, insider threats, men-in-the-middle attacks, and protocol vulnerabilities in mind. Thus, the update offers a more technical approach with specific guidelines and could have worldwide ramifications as other countries release their own recommendations modeled off the US example.

As regards Chinese regulators, in 2020, the State Administration for Market *Regulation (SAMR) introduced sweeping new regulations targeting OTA based on the Regulation on the Administration of Recall of Defective Auto Products. Like the US and UN, it included several provisions for automobile data security, which were included in a draft provision introduced in May 2021 and awaiting implementation. It advanced five "advocative" principles of data collection, which mandated that the default setting of any vehicle should be the non-collection of data, in-car processing so that the information gathered comes from within the vehicle instead of outside, data anonymization, a maximum retention period for data, and an applicable scope of precision for data gathering.

The main articles, which have already been passed, established a new reporting mechanism whereby Chinese manufacturers who send updates using OTA must notify the SAMR by filing a record. These measures encourage greater transparency and communication between the trifecta of government, manufacturer and consumer, allowing the rollout of OTA to be as safe as possible.

In general, the main difference between Chinese regulations, UN recommendations and NHTSA update is the former's focus on accountability and the latter two's focus on technical regulation. Both the UN and NHTSA hone in on the safety of OTA-capable vehicles, stressing the enhancement of cyber security measures to prevent glitches and deter hackers. On the other hand, Chinese regulators prioritize accountability and oversight, creating a paper trail that incentivizes companies to conduct their OTA rollouts ethically and safely. But perhaps the most glaring difference is the differing degrees of enforcement backing each of the regulations, with Chinese regulations legally binding, while the UN's recommendations are non-binding per se, and NHTSA updates are, alas, only updates and not backed by law.

Nevertheless, all three parties have introduced the necessary building blocks for an effective regulatory approach to OTA technology. As mentioned, the NHTSA updates could spark similar progress around the world and the UN directives could find their way into the legislatures and regulatory agencies of member nations and be turned into law. Even better, each country can take these initiatives and adapt them to their needs and decide on the appropriate enforcement measures.

In the near future, as 5G technology enables larger and more frequent updates, we will be faced with many tough questions about OTA. Therefore, it is important to start discussions now, lest governments be caught in a frantic game of regulatory catch-up.

ABOUT THE AUTHOR

Author: David Goh
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David is internationally recognized as a leading product liability lawyer in Hong Kong and Singapore. He has over 25 years of experience in the defense of product liability claims in the Asia Pacific region. Leading the team in Asia Pacific region on product liability matters, David has been in the forefront in advising clients on how to prevent Product liability claims and defend high risk cases. David has special interest in advising manufacturing, in particular automotive sector on regulatory requirements and priorities management issues. Apart from product liability, David also handles complex commercial disputes, whether in litigation, arbitration or other forms of dispute resolution. In particular, David has represented clients in large shareholder disputes, insolvency and matters relating to internal company matters. He is also often called upon to handle cross-border matters, and has built up significant experience in dealing with issues relating to conflict of laws or private international law. He is qualified in Hong Kong, Singapore and England.

LEGAL ERA IN CONVERSATION WITH RAJESH NARAIN GUPTA

ON HOW PROMOTING AND IMPLEMENTING ESG WILL BE CRITICAL TO THE SURVIVAL OF BUSINESSES – INCLUDING LEGAL FIRMS

LE: Let's start with the fundamentals, Rajesh. Could you walk us through the concept of ESG?

So, in the early 2000s, terms like ESG (Environmental, Societal, and Governance) gained momentum on a global scale. The UN and other international organizations started focusing on business concepts that were unrelated to shareholder or business interests alone. That means a shift from a capitalist focus to considerations regarding environmental and societal impact – like how business decisions impact the community, underprivileged societies, and our environment. This shift has aided the movement towards ESG globally.

A simple example is the world's slow move from fuel-powered vehicles to electric vehicles – issues regarding carbon footprint and other detrimental business impacts were earlier treated with a Laissez-faire policy, but today, things have changed significantly.

ESG is the natural extension of organizational charity – including governance implications on non-fundamental economic principles. It is extremely important for businesses to consider in terms of value creation. Even though we aren't used to the terminology or all that it encompasses, ESG is becoming more widely accepted. It also defines the tools that these organizations need to address the gambit of ESG.

> "MINDSETS ARE IN THE PROCESS OF CHANGING AS WELL, BUT IT IS A SLOW AND STEADY JOURNEY TOWARDS ESG":
>
> **RAJESH NARAIN GUPTA**
> Managing Partner, SNG & Partners

LE: This is interesting. Of all the terms floating around, why was the all-encompassing ESG selected?

You see, all other policies are only related to the environment, human rights or a particular ecosystem, in a silo. However, each of these segments is fundamentally interconnected and cannot be limited to how boards function. Before ESG, environmental compliance was unheard of, but now you might earn Mutual Fund investments or a cheaper rate of interest from a bank for being ESG compliant. Essentially, ESG is a product of these various factors that influence it. In India, we started with CSR activities and have now progressed to ESG with initiatives from big institutions like MCA and SEBI, which has encouraged other businesses to move in this direction.

LE: There are many who may use the terms CSR and ESG interchangeably which may not be correct. Could you bridge this gap between the understanding of CSR and people's receptiveness to ESG?

Well, ESG is a natural extension of CSR. In the past, CSR has primarily been associated with businesses or companies well before it became mandatory. Government and private businesses invested in CSR activities that date back to the Vedic era, where kings and leaders proactively contributed to their societies. More recently, big corporations like the Tatas or Birla's have been major contributors to society – from temples to hospitals. On a much smaller scale, most people are inclined to contribute towards charitable organizations.

All of this has happened without any law in place. Given that CSR has been conducted while it is still voluntary, the question of government interference arises: Is it really necessary?

I believe government interference is important for the benefit of everyone and equitable charity. Being held accountable to contribute in specific ways can strategically end many issues plaguing our societies and environment. CSR generally targets research, child welfare programs, medicine/hospitals, or even issues around diversity and inclusion. But is that enough? No. Not when we're talking about global warming, the Amazonian Forest fires, and the overall carbon footprint of humanity. These rapidly escalating situations require our attention, and that's where ESG comes in.

Then you've got governance which relates to accountability and ownership. In a professionally managed business, you want a board of managers and CEOs who can run the organization effectively, give back to employees, and generate significant profits for various internal stakeholders.

When considering influence, invoking ESG compliance can percolate from company to company. If large companies or suppliers refuse to do business with small organizations because of a lack of compliance, it could be detrimental. But with government enforcement, one could push these organizations to be compliant and start a chain reaction of positively influencing the adoption of ESG initiatives. And with large companies like DLF or Hindustan Unilever, where there are numerous suppliers, the implementation

of ESG will be mandatory for all of them – it is an inevitable outcome.

LE: Wonderfully explained. That offers clarity on the differences and the reverse pressure that can be formed to be ESG compliant. Does the pressure from governments benefit this effort?

That's correct! Reverse pressure is exactly the situation that will arise if ESG is implemented through a regulatory body and if companies start incorporating it. Today, our government has set expectations for this kind of social reporting, so many companies like HDFC Limited, ICICI Prudential, and Yes Bank have already started adopting and reporting it. ESG is slowly becoming a reality! With governments acting on these implementations and the demands of the society, we're definitely on the road to good.

LE: As ESG moves from paper to action, how is the government acting as an implementation driver?

In our research, we've found that the UN started global initiatives several years ago – inviting international organizations and individuals to partake in sustainable missions. These steps to curb climate change, carbon footprints, and move towards environment consciousness resulted in tremendous benefits. In 2011 in India, MCA developed national voluntary guidelines or the EEG to manage these social, environmental, and economic principles that businesses should be adopting. The EEG provided the framework for the business responsibility report or BRR. This report came into existence because the government believed – and rightly so – that business should be involved in the revitalization of society. The BRR contained 9 principles that determined the intersections between business and society, how they should be managed, and policies they were liable to uphold.

In 2019, SEBI developed NBGRC, guiding principles focused on business and human rights raised by the UN. More recently, SEBI added business responsibilities and sustainability reporting to determine the impact of businesses on the environment and society. This initiative began with 100 companies and now has over 1000 companies reporting these stats.

In everything we've studied so far, it was interesting to find these companies reporting against the three ESG criteria. These reports add transparency for both internal and external stakeholders and affect the rating of these companies – which, I think, in turn, will aid in generating more responsibility and accountability. It prompts consumers to question the ethical background of these companies and influence their path towards sustainable initiatives.

Take, for example, if a large auto manufacturing company doesn't follow ESG, many of their clientele might choose to steer away from their goods or services. When companies take note of this decline in their business, it might encourage them to initiate ESG reporting and policies.

While there is still a lot to be done, it's heartening to see how far we've come and the direction in which India is heading.

LE: That's true, Rajesh. Now while understanding whether a company is ESG compliant will be a matter of checking their label say for an FMCG, but when it comes to service-related companies, like the Legal Industry, how does one evaluate the ESG compliance?

Firstly, law firms can set organizations on the right path towards ESG by helping them align with requirements, executions, and various outcomes for ESG and their business. They can elevate the need for ESG and its implementation, and in turn, create value and profit for themselves.

Secondly, it is imperative for legal agencies to follow ESG standards to retain their clientele. Within our industry, we contribute detrimentally to our environment. For example, our printing enterprises encompass a large carbon footprint. This needs to change by going digital. Similarly, our clients will look to us to comply with other policies as well. Our responsibility is to promote ESG to our clients and impart the necessary knowledge to execute ESG properly. Promoting and implementing ESG will be critical to the survival of businesses – including legal firms.

Considering these facts, law firms who are ESG compliant (or not) will be easily identified by the clients they serve, their associations with these other businesses, and how they choose to run their enterprise.

LE: So, this goes back to the fundamentals of success and how businesses can survive, correct?

I think the difference now is that we will be monitored, and accommodating ESG principles will no longer be an option – unless we want to be out of business. It is imperative to invest in the policies now rather than pay a heavier price later. Right now, we're talking about ESG but take into account IT compliance or ethical compliance. Without the right tech or policies in place, very few investors or clients will want to do business with you. Much like having these foundational segments in place is necessary for success, ESG will eventually fit into this bracket.

LE: In an article in the Financial Express, you mentioned that the younger generation is far more receptive and conscious as a society. Would you mind telling us how or why that is? How are things changing for the better?

That is absolutely true! Millennials, GenZ – are very socially and environmentally conscious. They do not tolerate wastefulness or activities that adversely harm the environment, like the shift from plastic to glass bottles, motor vehicles to cycling, or even avoiding firecrackers on Diwali.

In my very home, my daughters are constantly educating me on the benefits of environmentally friendly products or methods of sustainable living. If young children can adjust their lifestyles for the welfare of our environment, it is only a matter of time before they carry these virtues into their offices or businesses.

And all this will change the nature of industries – legal and otherwise – and how they operate. It is simply a matter of having alternatives. With an option to do better, who would choose anything else? Additionally, changing tracks towards more sustainable avenues doesn't reduce the need for labor or business. It just means that the requirements or production needs have changed to generate a new outcome with increased transparency.

LE: Government regulations can be hard or soft. Are the hard regulations affecting businesses or industries negatively?

Honestly, these regulations or policies are tailored for each industry and its specific requirements. So, a balance between soft and hard regulations is necessary and present, and it depends on how businesses choose to approach and implement them. For example, financial institutions under ESG compliances will be heavily impacted. Suppose the government incentivizes the banking industry towards being fully compliant with ESG. In that case, the banks will, in turn, reduce rates of interest or give larger benefits to businesses that follow the same policies. But in order to get to this point, mature thinking and research are required. Even for the government itself, it's crucial for them to consider how they manage and are accountable to the public and independent courts of law. It is also important for the government to improve how they conduct their inspections or carry out these legal policies.

In this context, monitoring becomes a dominant method of keeping things aligned and on track. For example, even though child labor is banned, only close monitoring of factories and institutions can improve the authenticity of the policies and reports that are being churned out.

LE: Would you say this balancing act is crucial so that ESG doesn't become a flourishing ground for litigation and the intention isn't lost?

I think it's a matter of complying or paying the price – literally – of being non-compliant. Transparency is of the utmost importance here. You cannot just demand money for a charitable but explaining the need for it, how it will be executed, and the consequences of not complying will help assimilate businesses with ESG compliance.

LE: This has been extremely insightful, Rajesh. Is there anything else you would like our readers to know?

Only that at this juncture everyone is in the process of learning and gathering the right resources and information. ESG is a holistic concept that requires the right capabilities for thorough implementation and out-of-the-box thinking to assess impact and requirements properly, augment current policies, etc. Mindsets are in the process of changing as well, but it is a slow and steady journey towards ESG because not everyone is ready or has the means to push forward. There won't be any direct answer to many questions, there's a big gap to bridge and a path with many obstacles to overcome. Building awareness, conducting workshops, regular, methodical, and steady implementations are the way forward. I hope for the best outcome, whether it happens in our lifetime or the next.

FDI Policy Changes and Other Reforms In THE TELECOM SECTOR

The Government of India recently announced a relief package for the telecom sector[1]. One of the key relief measures announced by the government was the amendment to the Foreign Direct Investment Policy, 2020 (**"FDI Policy"**) to allow 100% foreign direct investment in the telecom sector under the automatic route (i.e., where no prior approval of the government was required). This decision was subsequently notified vide Press Note 4 of 2021 (**"Press Note 4"**) issued by the Department for Promotion of Industry and Internal Trade (**"DPIIT"**). To understand the implications of the reforms one need to understand the telecom sector in India, and we will explain below.

As mentioned above, the Press Note 4 amended the earlier FDI Policy in the telecom sector to allow 100% FDI in all telecom

1 https://pib.gov.in/PressReleasePage.aspx?PRID=1755086

services (including telecom infrastructure service providers category 1). Consequently, Indian companies engaged in all telecom services are eligible to receive FDI to the extent of 100% under the automatic route, including telecom infrastructure providers category-I, viz. basic, cellular, United Access Services, Unified license (Access services), Unified License, National/International Long Distance, Commercial V-Sat, Public Mobile Radio Trunked Services (PMRTS), Global Mobile Personal Communications Services (GMPCS), all types of ISP licenses, Voice Mail/Audiotex/UMS, Resale of IPLC, Mobile Number Portability services, Infrastructure Provider Category-I (providing dark fiber, right of way, duct space, tower), Other Service Providers and as may be permitted by the Department of Telecommunications (**"DOT"**).

The Press Note 4 further provides that the licensing, security, and any other terms as may be specified by the DOT from time to time shall be observed by the entities providing the telecom services and the investors. The Press Note 4 also clarifies that investments in the telecom sector from countries sharing a land border with India will however require prior government approval.

The preceding law permitted FDI up to 100% but any investment beyond 49% required the prior approval of the Government. Press Note 4 has done away with the requirement for prior government approval (except in certain cases as set out above).

The automatic route provision for FDI by the Government is a welcome step to the telecom sector as it facilitates investment in the sector. The sector until the telecom reforms were announced was cash-strapped with some of its players like Vodafone Idea being on the verge of bankruptcy due to the levy of past AGR dues by the DoT.

To understand the implications of the reforms, one need to understand the telecom sector in India. India is currently the second largest telecommunications market in the world with a subscriber base of 1,198.5 million[2]. India also has the fastest growing app market and the second highest number of internet users in the world.[3]

The telecom sector used to be the poster boy of India's economic liberalization receiving substantial amounts of foreign investment and attracting global players like Vodafone, Hutch and Telenor. However high licensing fees, uncertainty in regulations, corruption and a controversial supreme court judgment overturning telecom licenses granted earlier led to many foreign players exiting the Indian telecom market. This was followed by the advent of Reliance Jio ("Jio") a company of the Reliance Industries group. Jio launched unlimited voice calls and 4G data services at extremely low prices. These prices were so consumer-friendly that Jio was able to penetrate the rural areas in India and thus increase internet penetration. The fall in telecom rates were matched by Bharti Airtel Ltd and Vodafone Idea Ltd (the other private telecom players in the sector). However, this led to a fall in the profitability of these companies.

2 India Brand Equity Foundation
3 India Brand Equity Foundation

In the event the Government had not announced these reforms, the exit from the telecom sector by Vodafone Idea would have meant there being a duopoly in the Indian telecom market i.e., only two players viz Bharti Airtel Ltd and Jio

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> **"Following the advent of Jio which caused a dent in the profitability of the remaining players in the sector came a Supreme Court judgement that past AGR dues must be paid."**

The damage has been the most for Vodafone Idea Ltd. Bharti Airtel Ltd has done relatively better, although even its profits have fallen sharply. Jio meanwhile, had reported a steady increase in profits, although its cash burn has been the highest in the industry and its return ratios have been low[4].

Following the advent of Jio which caused a dent in the profitability of the remaining players in the sector came a Supreme Court judgment that past AGR dues must be paid. "AGR" or "Adjusted Gross Revenues" is the licensing fee and spectrum charges that telecom operators are required to pay to the DoT for using the spectrum owned by the Government. The AGR dues for Vodafone Idea Ltd amounted to ₹500 billion and if claimed immediately by the DoT would make the company bankrupt.

It was at this point of time that the Government intervened and introduced the reforms measures for the telecom sector. The key measures introduced by the Government are:

1. **AGR Rationalization:**
   Non-telecom revenue to be excluded on prospective basis from the definition of AGR.

2. **Four-year Moratorium/Deferment:**
   A four-year moratorium/deferment on AGR dues and payments of spectrum purchased in past auctions (excluding the auction of 2021). However, those TSPs opting for the moratorium will be required to pay interest on the amount availed under the benefit.

3. **Promoting FDI:**
   The Reforms amended the FDI Policy with respect to the telecom sector to allow 100% FDI under the automatic route.

Other reforms included reforms on spectrum, rationalization

of penalties and interest payments and rationalization of bank guarantees. Needless to say, the reforms have catalyzed liquidity infusion into the telecom industry. The reforms have also reinforced the Government's support to the telecom industry. This has in turn boosted investor confidence in the telecom sector and in the country as a whole.

Conclusion

In addition to the aforesaid, the reforms have averted the potential bankruptcy of Vodafone Idea Ltd as a result of which there continues to be three main players in the Indian telecom sector. In the event the Government had not announced these reforms, the exit from the telecom sector by Vodafone Idea would have meant there being a duopoly in the Indian telecom market i.e., only two players viz Bharti Airtel Ltd and Jio. This would have been averse to the interests of consumers and the sector as well. The understanding and support of the Government to the telecom sector must be truly appreciated.

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Mini Raman is a corporate and transaction lawyer with 20 years of experience in 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 degree in law (LLM) from the University of London. She is a member of the Bar Council of Maharashtra & Goa

REQUISITIONING A SHAREHOLDERS' MEETING:

THE UNFOLDING EVENTS RELATING TO ZEE ENTERTAINMENT AND DISH TV

If the object of the proposed general meeting is illegal on the face of it or cannot legally be given effect to by the board or is an attempt to usurp the powers vested in the board, it should not be necessary for a board to convene such a meeting

The recent controversies relating to Zee Entertainment and Dish TV both involve investors holding significant stakes attempting to convene general meetings of shareholders through which they seek to replace certain directors on the existing boards. The shareholders' in these cases are Invesco Developing Markets Fund ("Invesco") and OFI Global China Fund LLC ("OFI") in the case of Zee Entertainment, and Yes Bank in the case of Dish TV. In both cases, the existing boards of directors have declined to convene such meetings.

We first consider a purely legal question related to the circumstances under which a company's board can decline a request from the company's shareholders to convene a shareholders meeting. We then consider whether the grounds on which the boards of Zee Entertainment and Dish TV have rejected the investors' requests are valid.

THE LEGAL STANDARD FOR REFUSING TO CONVENE A GENERAL MEETING

The relevant provision under the Companies Act, 2013 ("Companies Act") is Section 100.

Section 100(2) of the Companies Act provides that: "the Board shall at the requisition made by such number of members who hold, on the date of the receipt of the requisition, not less than one-tenth of such of the paid-up share capital of the company...call an extraordinary general meeting of the company within the period specified in sub-section (4)".

Section 100(4) further provides that "if the Board does not, within twenty-one days from the date of receipt of a valid requisition in regard to any matter, proceed to call a meeting for the consideration of that matter on a day not later than forty-five days from the date of receipt of such requisition, the meeting may be called and held by the requisitionists themselves within a period of three months from the date of the requisition".

A reading of Section 100 suggests that the board of directors does not have the power to examine the matters that are proposed to be voted upon. They must proceed with convening a general meeting so long as the shareholders who have sent such requisition hold 10% of the company's share capital. In the event that the board fails to do so, the members have the option of convening such meeting on their own.

Courts have, however, previously taken differing views on how the expression "a valid requisition" in Section 100 needs to be interpreted.

In the case of Cricket Club of India v. Madhav Apte, one of the parties to the dispute had attempted to convene a general meeting to amend the articles of association of the Cricket Club of India. The Bombay High Court held that the proposed amendments themselves were illegal but that the board of directors were nevertheless obliged to convene an EGM if the shareholders who had sought to convene the general meeting fulfilled the 10% threshold set out under the Companies Act. In other words, the word "valid" under Section 169 of the Companies Act, 1956 (which corresponds to Section

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100 of the Companies Act) should have no reference to the object of the requisition but rather to the requirements of the section itself. If the requirements of the section are satisfied (i.e., that the person(s) requisitioning the shareholders' meeting hold(s) at least ten percent of the paid-up share capital of the company), then the requisition must be regarded as a valid requisition on which the directors must act. It would then be up to the chairperson of the meeting and the shareholders to determine the course to be adopted at such meeting.

A contrary view was taken by the Madras High Court in the case of Sivaraman v. Egmore Benefit Society Limited. In this case, certain persons were elected as directors at a company's annual general meeting. Shortly after the meeting, the persons who had lost the election sought to requisition another general meeting for the removal of the elected directors. The Court held that the removal of duly elected directors shortly after a general meeting was not a valid reason for convening a general meeting and the board was not obliged to convene such a meeting merely on account certain shareholders being able to fulfill the 10% threshold.

Taking into account these differing views, we think that the correct legal standard should be that if the object of the proposed general meeting is illegal on the face of it or cannot legally be given effect to by the board (for instance on account of repugnancy with the Companies Act or the articles of association of the Company), or is an attempt to usurp the powers vested in the board, it should not be necessary for a board to convene such a meeting. As another instance, if the object of the meeting is to authorize the company to engage in a criminal enterprise, the board can obviously not be compelled to convene such a meeting.

GROUNDS FOR REJECTION

Turning to the facts of Zee Entertainment and Dish TV cases:

a. Pursuant to a requisition letter dated September 11, 2021, Invesco and OFI requested the board of Zee Entertainment to convene a meeting of the company's shareholders to remove three existing directors (including the managing director and CEO, Mr. Punit Goenka) and appoint six independent directors. Two of the existing directors resigned from the board citing personal reasons shortly after; rendering the requests for their removal unnecessary. On October 1, 2021, the board of directors unanimously declined to convene the shareholders' meeting to consider the appointments and the resignation of Mr. Punit Goenka.

b. Similarly, in the case of Dish TV, through a letter dated September 21, 2021, Yes Bank requested the board of Dish TV to convene an EGM for effecting the (i) removal of five directors (including the managing director and CEO, Mr. Jawahar Lal Goel) and (ii) appointment of two non-independent directors and five independent directors. On October 13, 2021, the board of directors unanimously declined to convene the shareholders' meeting to consider the appointments and the resignations.

> **"The underlying ethos of Zee's arguments is not a substantive approach based on the relevant provisions of the Companies Act but a reliance on the Indian regulatory framework (and perhaps even a tendency to assume the role of regulators) to cut across explicit shareholder/investor rights – it is not the first time these type of arguments have been raised (similar arguments have notoriously been raised on numerous occasions on the basis of the Indian exchange control regulatory framework) and it will not be the last"**

In both cases, the respective existing boards have cited the following reasons (among others) for rejecting the investors' requests:

- **Prior Permission of the Ministry of Information and Broadcasting ("MIB")**
  Both the Dish TV and Zee Entertainment boards have argued that changes to the companies' boards required the prior approval of the MIB and that since the investors had not obtained such permission before writing to the companies' boards, the boards cannot convene general meetings. It is, however, difficult to understand how the investors could have obtained such permissions since it is only the license holders (i.e., the companies) and not the investors who are capable of making such applications. Yes Bank has also acknowledged this in their requisition; they state that the proposed appointments of the new directors shall take effect only after the MIB's approval is obtained and that Dish TV should seek the requisite MIB approval.

- **Non-Compliance with the SEBI's Takeover Regulations**
  The existing board of directors of both companies argue, in essence, that by replacing over half of their board of directors, the investors are seeking to acquire "control" of the companies and that accordingly, the investors will need to comply with the provisions of the SEBI Takeover Code – that is, the investors will be required to make an "open offer" to the companies' public shareholders. This contention is problematic on two counts. First, even if investors were not making an open offer although required to, it is a matter for the regulator, i.e., the SEBI, to investigate and pass judgment on. The SEBI has the authority under the Takeover Regulations, in an appropriate case, to require an "acquirer" to make an open offer. It is not appropriate for the board of directors of the two companies to adjudicate such matter in the SEBI's place.

  Second, almost all of the directors who the investors seek to appoint are proposed to be appointed as independent directors and not as investor nominee directors. It is therefore, in any event, arguable whether and to what extent the investors will have control over the respective boards if such appointments were to be made.

There are other arguments as well that have been made by the two companies. For instance, the Dish TV board has also cited concerns involving the Banking Regulation Act, 1949 and both the Dish TV and Zee Entertainment boards have stated that replacing the companies' directors will require prior approval of the Competition Commission of India. These concerns have not been set out in detail in the companies' public statements.

The underlying ethos of all of the above arguments is not a substantive approach based on the relevant provisions of the Companies Act but a reliance on the Indian regulatory framework (and perhaps even a tendency to assume the role of regulators) to cut across explicit shareholder/investor rights – it is not the first time these type of arguments have been raised (similar arguments have notoriously been raised on numerous occasions on the basis of the Indian exchange control regulatory framework) and it will not be the last.

CONCLUSION

In relation to Zee Entertainment, legal proceedings are currently pending before the National Company Law Tribunal, the National Company Law Appellate Tribunal and the Bombay High Court. As regards Dish TV, legal proceedings could well be initiated soon. In both cases, we consider the reasons put forward by the respective boards to reject the requisition of general meetings to be difficult to sustain.

Another twist in the tale is the amendments to the SEBI's Listing Obligations and Disclosure Requirements Regulations, 2015 which require that from January 1, 2022, any appointment or removal of an independent director will require a special resolution (a 75% majority vote) as opposed to an ordinary resolution (a 50% majority vote) that is required at present.

The case of Zee Entertainment has also raised certain corporate governance issues, which merit separate analysis.

Note: This article was authored on October 22, 2021 and does not account for subsequent developments in the matter.

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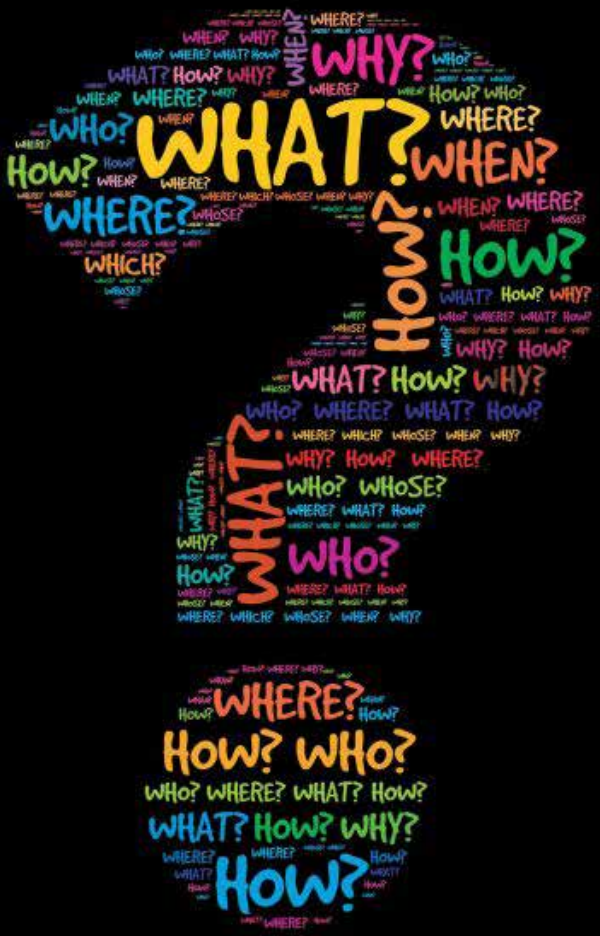

DISCIPLINARY INQUIRY
BEFORE DISMISSAL OF EMPLOYEE
NOT MANDATORY

AN ANALYSIS

In other words, Employers may not have to go through the entire process of disciplinary enquiry if there is leading evidence against the dismissed employee warranting such action

The employer and employee relationship as known to the world has witnessed sea changes through the course of time as the world progressed towards the modern age of industrial revolutions. Both the employer and employee traversed through economic activities of a nation and world at large, progressing from an elementary form of informal to a formal arrangement however the conflict resolution mechanism between the two has always been a point of discussion with odds favoring the employer in general. However, with the increased participation and role of regulators, authorities and most notably through judicial remedial actions, this employer-employee relationship has been given a new horizon in the direction of relationship of mutual benefit & respect with a common goal to participate in commerce while reaping economic benefits. With the emergence of several employment-related concepts, the concept of requirement of disciplinary enquiry was introduced for ensuring adherence to essential legal principle Audi Alteram Partem which connotes that "no one should be condemned unheard". Discipline herein signifies compliance to the predefined code of conduct & rules and accordingly, obedience of same is envisaged in the contract of service. Accordingly, Disciplinary Enquiry herein means enquiry into the charges of indiscipline and misconduct by an employee.

Employment disputes stemming from disciplinary issues are usually subject to intense scrutiny by judicial authorities owing to the uniqueness of factual positions/circumstances involved therein. Accordingly, there can't be a "one size fits all" theory applicable for resolution of such employer-employee disputes. While a disciplinary enquiry is perceived as a preliminary document detailing contentions and counter-contentions of parties coupled with evaluation of the matter, thereby providing substantial insight into the dispute at hand, however, it may not be always practicable and/or necessary for conducting disciplinary enquiry before an employer makes any binding decision in respect of retaining or dismissing an errant employee in any given situation. The onus to prove the legitimacy - of disciplinary action shall be on both employer and employee through adducing sufficient evidence for the same.

DISCIPLINARY ENQUIRY – BEFORE & AFTER SECTION 11A OF INDUSTRIAL DISPUTES ACT:

Before the introduction of Section 11A of the Industrial Disputes Act, Tribunal/Labour Court would only interfere with a decision of management pursuant to an enquiry, if the same a) lacks good faith b) resultant of unfair labor practice c) violation of principles of natural justice d) findings not based on material evidence. However, post introduction of Section 11A in Industrial Disputes Act in 1971, the powers of the Tribunal/ Labour Courts were extended to interfere with the decision of management even if the same was resultant of valid enquiry besides their power to interfere in case of no enquiry or an invalid enquiry. Hence, the significance of conducting a disciplinary enquiry by the management against an employee of interest eventually reduced.

HON'BLE SUPREME COURT JUDGMENT IN STATE OF UTTARAKHAND & ORS. VS SURESHWATI (CIVIL APPEAL NO. 142 OF 2021):

In the underlying case, owing to continued absence of an Assistant Teacher, its employer namely Jai Bharat Junior High School, Haridwar dismissed her services. The said decision was challenged by the employee alleging illegal retrenchment without being granted any hearing or payment of retrenchment compensation. The Labour Court while pronouncing its award held that the employee is not entitled to any relief as

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"Employment disputes stemming from disciplinary issues are usually subject to intense scrutiny by judicial authorities owing to the uniqueness of factual positions/ circumstances involved therein. Accordingly, there can't be a "one size fits all" theory applicable for resolution of such employer-employee disputes."

the School has adduced appropriate evidences to corroborate the employee's continued absence from duties. The employee challenged the said decision by way of writ petition filed before the Hon'ble High Court of Uttarakhand. The High Court set aside the award passed by the Labour Court on account of lack of appropriate enquiry or disciplinary proceedings regarding said abandonment of services by employee.

The Hon'ble Supreme Court in the appeal filed by the School against the order of High Court held that the Labour Court was correct in its order to not grant any relief to the employee as there was adequate evidence, both oral and documentary provided by the School against the employee. It was proved by the School that the employee had abandoned her service when she got married and moved to another district, which was not denied by her in her evidence. The school records revealed that the employee was not in employment of the School since then.

RATIO:

The three judge bench comprising of Hon'ble Justices L. Nageshwar Rao, Navin Sinha and Indu Malhotra observed that in order to dismiss an employee, it is not essential to hold a disciplinary enquiry against the employee, provided that the employer places proof by way of leading evidence before the Labour Court pertaining to the reasons for dismissal or discharge and is able to substantiate before the Labour Court why a Disciplinary Enquiry was not conducted for the same.

In the case of State Bank of India v. Shri N. Sundara Money (1976 SCR (3) 160), the meaning of the expression "for any reason whatsoever", was broadly interpreted by the Hon'ble Supreme Court. It had been held that the expression holds no exception to it and that retrenchment means termination of a worker's services for any reason whatsoever, apart from those laid out in section 2(oo) of the Industrial Disputes Act, 1947. In the present case, it was contended that the employee had abandoned her services when she got married and moved to another city. Therefore, due to this reason, the dismissal of the employee in the current scenario can fall under the scope of "for any reason whatsoever".

ANALYSIS:

The Hon'ble bench, while pronouncing its judgment primarily relied on three judgments as under:

a. **Workmen of Motipur Sugar Factory Pvt. Ltd vs Motipur Sugar Factory (AIR 1965 SC 1803)**, wherein it was held that "where an employer has failed to make an enquiry before dismissal or discharge of a workman, it is open for him to justify the action before the Labour Court by leading evidence before it". The Hon'ble Supreme Court held that the act of justification was duly done by the Employer in the current case by adducing appropriate evidence.

> *"In order to dismiss an employee, it is not essential to hold a disciplinary enquiry against the employee, provided that the employer places proof by way of leading evidence before the Labour Court pertaining to the reasons for dismissal or discharge and is able to substantiate before the Labour Court why a Disciplinary Enquiry was not conducted for the same."*

b. **Delhi Cloth and General Mills Co. v. Ludh Budh Singh (1972) 1 SCC 595,** where it was held that if the management does not conduct a domestic enquiry or does not reckon with any held enquiry, then in that case, it can straightaway adduce evidence justifying its action. The Tribunal is confined to consider the evidence produced before it and provide its decision accordingly. If the employer himself does not count on the enquiry then in that case, it is not necessary for the Tribunal to consider the validity of the domestic enquiry.

c. **Bhavnagar Municipal Corpn v. Jadega Govubha Chhanubha, (2014) 16 SCC 130,** wherein "It is fairly well-settled that for an order of termination of the services of a workman to be held illegal on account of non-payment of retrenchment compensation, it is essential for the workman to establish that he was in continuous service of the employer within the meaning of Section 25-B of the Industrial Disputes Act, 1947." In contrast, the employee in the current case failed to establish the fact that she was in continuous employment, since he failed to produce salary slips as proof of the said fact.

d. **Workmen of Firestone Tyre & Rubber Co. of India (P) Ltd. v. Management of Firestone Tyre & Rubber Co. of India (P) Ltd., (1973) 1 SCC 813,** the Hon'ble Supreme Court placed great emphasis on the principles detailed in the said matter which stated that before imposing punishment, an employer is expected to conduct a proper enquiry. However, in cases wherein enquiry has not been conducted or has conducted a defective enquiry, an "Opportunity should be given to both employer and employee to adduce evidence before the Tribunal justifying their respective actions. The effect of an employer not holding an enquiry is that the Tribunal would not have to consider only whether there was a prima facie case. An employer who wants to present evidence first before the Tribunal to justify his action, should ask for it

RAHUL SINGH
Inhouse Legal

HARSHITA AYAN
Assistant Legal Counsel

at the appropriate stage. The Tribunal has no power to refuse such request. The Tribunal should not direct reinstatement of a dismissed or discharged employee only on the basis of non-enquiry or a defective enquiry".

CONCLUSION:

The requirement of conducting disciplinary enquiry, as recognized by Hon'ble Apex Court in multiple judicial precedents, is an important aspect in the interest of justice and balance of convenience for both employer and employee before severance of relationship. However, the judgment in State of Uttarakhand & Ors. vs Sureshwati is seen as a welcome step by employers, since the Hon'ble Supreme Court acknowledged that there could be certain eventualities wherein conducting such disciplinary enquiries are either not practicable or not required considering the factual positions involved therein or the evidences manifesting retrenchment of employee. In other words, Employers may not have to go through the entire process of disciplinary enquiry if there is leading evidence against the dismissed employee warranting such action. The said dismissal will be justified provided the employer substantiates his action before the Labour Court. The judgment passed by the Hon'ble Supreme Court in the aforesaid matter has not just brought much-needed respite to employers but has also re-established the principle of balance of convenience for both employers & employees and ensured that absence of any step(s), though mandatory, cannot be perceived as a ground for challenging the disciplinary action and prematurely corroborating the demand for reinstatement and the matter should be seen in the light of evidence adduced by both employers as well as employees.

ABOUT THE AUTHOR

Author: Vineet Vij
Designation: Global General Counsel

Vineet has rich professional experience of 25 years in Legal, Secretarial, Regulatory, Risk & Compliance and Corporate & Public Affairs, in leading Information Technology, IT-enabled services, Engineering, Banking & Non-banking Financial Companies. Most recently, he served as Senior Vice President - Legal, Commercial, Regulatory, Compliance & Public Affairs at HCL Technologies Ltd. for over 11 years. Earlier, Vineet has worked in Legal, Regulatory & Secretarial roles with TATA Group- TATA Unisys/Infotech Ltd. and TATA Consultancy Services Ltd. for 10 years, besides handling Legal, Secretarial & Compliance functions in Punj Lloyd Ltd. and American Express India. He has also been a litigator & practicing advocate before Hon'ble High Courts of Delhi & Mumbai and district courts & tribunals across the country and has been a witness to of the landmark judgments passed by courts in India and across the globe.

Author: Rahul Singh
Designation: Inhouse Legal

Rahul is a legal professional with over 6 years of experience and is currently working as an Inhouse Legal in Tech Mahindra Ltd. global legal team rendering support in managing legal affairs and issues in a multi-jurisdiction environment. He is a commerce graduate (B.com) from University of Delhi and holds LL.B degree from Campus Law Centre, University of Delhi.

Author: Harshita Ayan
Designation: Assistant Legal Counsel

Harshita is currently working as an Assistant Legal Counsel with Tech Mahindra Ltd. She has a professional experience of 2 years in the legal field and has completed her BBA LLB (H) degree from Amity Law School, Noida.

LEGAL ERA

Indian Legal Awards 2021-22

"Recognition of Legal Finesse, Innovation & Accomplishments"

www.legaleraawards.com

LEGAL ERA SHINES THE SPOTLIGHT

ON INDIA'S MOST PROMISING YOUNG LEGAL TALENT AT THE

9th October 2021 marked a visionary moment in the Indian legal industry - the impactful conduct of an awards event dedicated to recognizing the most competent young lawyers of India and celebrating their resilience and conviction, innovative solutions and fearless leadership, tech-savviness, and entrepreneurial adaptability to rise above the challenges of these unprecedented times.

As the 6th Edition of Legal Era - Legal Media Group's Annual "40 Under 40 Rising Star Awards 2021" unfolded, the who's who of the legal industry, the business world, the judiciary, and the government witnessed a stunning demonstration of the spirit of young lawyers to adapt and diversify in keeping with evolving expectations of the market. They saw how each of the 40 young achievers' mental mobility and resilience resulted in strategic legal services and fresh legal solutions, and leveraging new opportunities amid a fast-changing landscape.

Keeping alive the essence of the last five Editions, the 40 Under 40 Rising Star Awards 2021 continued to embolden a generation of young lawyers, who now know that they have a global platform to be recognized for the great strides they were making in the legal universe. The search for India's young and upcoming legal talent under the age of 40 years officially began 6 years back! Legal Era was the first organization to institute these young achievers' awards to recognize their outstanding achievements and professional excellence industry-wide. And that was exactly what happened at this Sixth Edition.

Even as the event was virtual, the energies and excitement, the crescendos of winning moments and the stories of agility and quick thinking, entrepreneurial spirit, and the attempts to redefine legacy methods of the legal industry were as real as could be.

A distinguished Jury chose the 40 Rising Star Awardees of the Year via a meticulous and herculean selection process. The awards were open to the under 40 age group of lawyers through both routes – self-nomination and peer-nomination. And certainly, they did not miss out on this exceptional opportunity to get on the stage and take the space that is truly theirs.

The Jury saw over 340 nominations, many extremely promising from trailblazing GCs under the age of 40 handling challenging global and pan-India roles. That was in line with Legal Era's vision behind 40 Under 40 Rising Star Awards - to motivate deserving millennial lawyers with recognition and coveted certificates of appreciation for transforming the legal industry and legal practice with relevance and timeliness, agility, and customized approach.

Going a step ahead, the event was not only about awards. It was also a forum for an intelligent exchange of thoughts as distinguished experts and doyens of the world of business and law stirred up conversations.

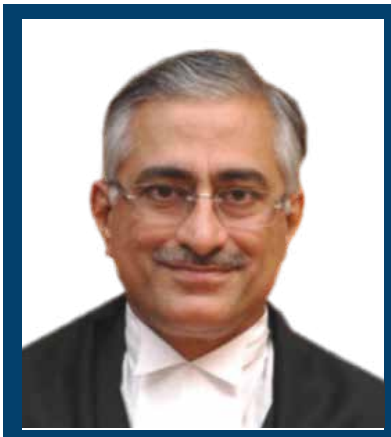
The Awards evening kickstarted with a visionist opening address by Dr. Lalit Bhasin, President, Society of Indian Law Firms took the lead with his Opening Address where he acknowledged that this was a unique event to honor eminent lawyers under the age of 40. He opined, "Yes, millennial lawyers are transforming the way the legal profession is being practiced. "While adapting to new practices, don't forget the invaluable traditions – we have inherited from our first Prime Minister, our first President, our Father of the Nation, and Dr. Ambedkar who granted us the Constitution.

He also appealed to the awardees, "We have a duty to give it back to the society and play a role in the nation's service. Take on pro bono work, do service by way of legal aid, go and visit law schools and disseminate awareness among law

Justice Gita Mittal

former Chief Justice of the Jammu and Kashmir High Court,
Former Acting Chief Justice & Judge, Delhi High Court

"Honesty, hard work, humility – that's what you need in court.



Justice JR Midha
Former Judge, Delhi High Court

"I wish I was under 40 today!" While being successful under the age of 40 was very creditable.

students. Don't make the legal profession only a business. Let it remain a profession with all its nobility and greatness."

In his wisdom, Dr. Bhasin guided that after 40 years of age, the consolidation process began whereby we expand, develop specializations and expertise in various aspects of the law. It was an endless journey that ended only when as the most respected Fali S Nariman said once, "In India, we don't retire, we just drop dead when we have to."

Dr. Bhasin concluded his address by applauding Legal Era for taking the lead to recognize and encourage the 40 under 40 young lawyers besides so many other initiatives under the able leadership of the brilliant mind and founder Aakriti Raizada. It will serve as a motivation for all the young lawyers watching the event.

Justice Gita Mittal shared her words of advise with anecdotes of her experiences, she said, Honesty, hard work, humility – that's what you need in court. Never raise your voice in court no matter what the provocation by the judges. Know when to interrupt. Don't have to be an unnecessarily aggressive lawyer. Do whatever you want to do – but do it well. Principled lawyering. Have the courage to say no. Follow the law. That's non-negotiable, especially in criminal cases. Don't try to pull the wool over the judges' eyes or make Smart Alec arguments just to win your case.

Justice JR Midha, Former Judge, Delhi High Court applauded Legal Era for making this credible attempt to assess and reward the young lawyers of the country and jokingly said, "I wish I was under 40 today!"While being successful under the age of 40 was very creditable, he shared nuggets of advise for the winners.

Dr. Lalit Bhasin
President, Society of Indian Law Firms

Yes, millennial lawyers are transforming the way the legal profession is being practiced. While adapting to new practices, don't forget the invaluable traditions – we have inherited from our first Prime Minister, our first President, our Father of the Nation, and Dr. Ambedkar who granted us the Constitution.

Rafique Dada
Senior Advocate, Bombay High Court

The law is such a vast ocean and there is so much to learn that there is just not enough time in a lifetime. So every minute you spend with the law is important and someday it will come handy in the courts.

"One, a lawyer must know the art of how to live a balanced life. Two, the real wealth of a person is how much he would be worth if you take away all his money. And three, knowledge of the law is only one-third of advocacy. The rest is communication skills i.e. the art of listening, the art of speaking with clarity and emotions, the ability to read the mind of the client, the judge. And rational and logical thinking."

Justice Midha said, The performance of a lawyer is in the public domain from day 1. He need not wait for 15 years to become a great lawyer. Perform like the top lawyer of the country from your first appearance!"

Rafique Dada, Senior Advocate, Bombay High Court shared his joy that Legal Era as a magazine had

become an important landmark in legal journalism. He said,"When I joined the profession, long hours were spent in a futile search for legal issues but there was no chance to appear in courts. Juniors were not really looked at. However, it was important to study long hours and put all the effort to learn the law. The law is such a vast ocean and there is so much to learn that there is just not enough time in a lifetime. So every minute you spend with the law is important and someday it will come handy in the courts." He opined a couple of gems of wisdom. "One, respect your opponents. Two, respect the judge. Three, some things cannot be taught in books. You learn them from experience, And four, remember there's a lot of room at the top – and people at the top are waiting for you."

Amit Desai, Senior Advocate, Bombay High Court congratulated all the 40 under 40 winners. "They have worked hard to reach this hall of fame. You all carry forward the future of this great profession on your shoulders. You all will be shaping the destiny of this nation as we head towards the 100th year of independence. Some of you will enter the litigation world and, on your mantle, will rest the mantle of protecting the constitutional values. Some of you will continue transaction work and keep the engine of the economy chugging on. All the same, the digital age is upon us. Maintaining privacy will become imp to protect our Fundamental Rights. He concluded by recommending, "Facts are 3/4th of law, and maintaining the Rule of law is vital to our life and social order. And it rests on facts. As you march on, do not forget that."

Amit Desai

Senior Advocate, Bombay High Court

> "They have worked hard to reach this hall of fame. You all carry forward the future of this great profession on your shoulders.

Pravin Anand

Managing Partner, Anand and Anand

> "Observe – and that means to listen – listen to your client, the judge, your senior.

Pravin Anand, Managing Partner, Anand and Anand congratulated the young winners and shared a couple of words of advise for the millennial lawyers: Observe – and that means to listen – listen to your client, the judge, your senior. Make notes. You may have a subject matter notebook or an electronic device or a combination. It's imp to make notes as you can learn from anybody and everybody. Read. Read whole cases and not just relevant paragraphs. Read Commentaries. Treatises. And all those materials that we don't get on the internet. You need to read and know at least a little about everything and every other subject. For example, we don't want judges saying "These IP lawyers don't know anything about CPC." And then absorb what you read into your vocabulary and learning. Maintain good behavior. Even if you are the premier of the country, you cannot afford to be rude to anybody, even in a hotly contested matter.

Birendra Saraf, Senior Advocate, Bombay High Court shared life lessons that he learned the hard way so that the young Stars of the day may think about them. "Don't ignore family for work. That's not a badge of honor. Appreciate your partner Now is the time to give it back to them. Once you win the 40 under 40 awards, there will be enough people who will praise you. Beware of sycophants. Surround yourself with people who will keep you grounded. Also, guard your reputation and

Birendra Saraf

Senior Advocate, Bombay High Court

> "Don't ignore family for work. That's not a badge of honor. Appreciate your partner Now is the time to give it back to them.

integrity. Conduct yourself in a manner that once you give your word, you will honor it. And give back to society. Give time for your health. You need to last long. Even clients will abandon you if you don't keep well. Don't lose yourself. Keep your interests and hobbies alive to prevent yourself from burning out.

Debolina Partap, Senior Vice President Legal & Group General Counsel, Wockhardt Group gave a spirited address and specially highlighted how performing and excelling as 40 under 40 was such a difficult proposition. Using an analogy with the components of a sandwich, she said "The lawyers under 40 are the dressing and the filling of a sandwich. The GCs can do without them. The juniors cannot do without them. The seniors cannot do without them. They are the brilliant bridge. They have to face business, clients. Cannon to the left, cannon to the right and behind them – they have to fight so well – these people really face that day in and day out. They are the foot soldiers without whom the generals would not have performed.

Debolina Partap
Senior Vice President Legal & Group General Counsel, Wockhardt Group

"They have to face business, clients. Cannon to the left, cannon to the right and behind them

More so now as during the pandemic. Everything had to be learnt, re-learned, unlearnt, and thought fresh. A lot of lawyers in this mid-segment went without a job. They were most hit by the downsizing. Hence, it's really great that Legal Era is appreciating these mid segment lawyers."

Neera Sharma, CEO/CLO, Sistema Shyam Teleservices Ltd, congratulated Legal Era for recognizing the backbone of the corporate and legal fraternity. She shared that all professionals should try to find out work opportunities to help them reach where they want to. "You have to make your way." To equip themselves, she shared a couple of key skills - Tech savviness, Emotional Intelligence - If you're standing in the court, you can make out many things if you're emotionally intelligent. Need to have strong common sense. Where to stop, where to start. Be street smart. Communication skills – That includes writing skills. Also, read as much as you can. Creativity - Remodeling complexities. Self-development is very important Learning agility - Always be on the spree of learning. Sharp focus. Commercial acumen. Leading with example. Comprehensive commercial knowledge. Understand the business. Every in-house counsel has done their bit so that GCs are on the board now. Women directors on the board. More productive work is happening. We have great respect now for in-house GCs at corporates and they are a part of the leadership teams.

The 40 Under 40 Rising Star Awards 2021 is not just another Awards ceremony. It has grown to become a remarkable and much-valued platform of repute to discover, meet, and celebrate professional excellence among trailblazing young lawyers who have contributed to the industry's growth and success. It has become an occasion to showcase powerful examples of young lawyers with a rich appetite for risk and innovation. It served as an inspiration for other millennial General Counsels watching the Rising Star Awardees take the stage.

Neera Sharma
CEO/CLO, Sistema Shyam Teleservices Ltd

"Self-development is very important Learning agility - Always be on the spree of learning.

By casting a spotlight on the extraordinary work of these 40 young lawyers, Legal Era has set yet another example for best practices not only in India's legal industry but other sectors too. And each of the 40 lawyers became winners of not only the most coveted and the most relevant certificate of competence in the Indian legal industry. Always keen to move with time, capture trends, foresee challenges and create occasions for meaningful collaborations, we can only imagine what new benchmarks of competence and dynamism will be established at the 7th Edition of the Legal Era Annual 40 Under 40 Rising Star Awards.

WINNERS

OF THE LEGAL ERA - LEGAL MEDIA GROUP'S 6TH ANNUAL 40 UNDER 40 RISING STAR AWARDS 2021.

ABHINAV KUMAR

Partner
Cyril Amarchand Mangaldas

Abhinav Kumar is a Partner with Cyril Amarchand Mangaldas. He has been with Cyril Amarchand Mangaldas since his graduation in 2008, specializing in capital markets.

Abhinav has over 13 years of experience in the capital markets practice. He primarily focuses on equity capital markets' transactions including initial public offerings, follow-on offerings, rights issues, QIPs, preferential issues and a variety of secondary trades.

He is committed to developing the strong interest of the larger legal fraternity in the capital markets' practice. He has been assisting the firm on various committees constituted by SEBI for introducing reforms in the Indian capital markets.

For the last three years, Abhinav has been a guest lecturer at the Government Law College, Mumbai, teaching securities laws to working individuals and professionals. He is on the advisory board of the Corporate Law Journal which publishes articles on contemporary corporate law and securities law related issues.

ADITI SUBRAMANIAM

Associate Principal
Subramaniam & Associates

Aditi Subramaniam is an Attorney-at-Law with ten years of practice. She has a bachelor's degree in law from the University of Oxford and an LL.M. from Columbia Law School. She has also passed the notoriously challenging New York Bar Examination on her first attempt in 2018. Trained by Senior Advocate Maninder Singh, top-tier IP lawyers Hemant Singh and Mamta Jha, and Australian Law Firm Davies Collison Cave, she is currently an Associate Principal at Subramanian & Associates (SNA), a Tier-1 boutique IP Law Firm in India. She is expected to be admitted into full partnership of the Firm in the next quarter of the year.

While Aditi's practice spans across general law, she specializes in contentious matters in the field of intellectual property laws. She also provides clients with strategic, customized and expert advise on data protection and cybersecurity. For close to a decade she has, along with her colleagues, successfully represented a large number of domestic and international clients in high-profile patent and trademark oppositions and appeals before the intellectual property office, as well as in litigation before various high courts.

ANJALI JAIN

Partner & Head-Insolvency and Restructuring Practice
Areness

Anjali Jain heads the Insolvency and Restructuring practice at Areness, a full services law firm. She has spearheaded several complex litigations arising out of the Insolvency and Bankruptcy Code, 2016. Leading a versatile team of legal, finance and compliance professionals, she has guided several multinational corporations towards key turnarounds. Possessing a robust knowledge of statutory interpretation and being an ardent researcher, she is an active participant in development of the law on Insolvency, Corporate Restructuring, Debt Resolution.

A practising advocate and an alumnus of National Law University, Delhi and Lady Sriram College for Women, University of Delhi, Anjali is also a columnist and resource person for the IBC for leading names in the country. A member of INSOL International, she is one of the youngest faces at several national and international forums and discussions on law.

ANKUR SINGHI

Senior Partner
S. K. Singhi & Co. LLP

Ankur was designated Senior Partner of the Firm in 2016.

In his current role, he practices Corporate and Legal Advisory, chairing the Insolvency & Restructuring Division of Firm. He looks after Finance and Taxation, Legal Due Diligence, Compliances etc. He appears before various judicial and non-judicial forums including the Supreme Court of India, High Courts, Arbitral Tribunals, NCLT, NCLAT etc. He has developed and implemented processes to drive business of firm. He has introduced digital platform and systems in Firm's processes.

Prior to his current role, he was Consultant with Singhi IP Solution Private Limited, New Delhi, National Capital Region Before that, he was Director with Singhi Capital Finance Private Limited, Kolkata, West Bengal

Ankur is a professional entrepreneur having 10 years of experience in managing and handling a full-fledged law firm having multi-city presence and global alliances.

Ankur has a LLB from Utkal and a B.Com (Hons) Finance from St. Xaviers College, Kolkata.

He is a qualified Chartered Accountant with the Institute of Chartered Accountants of India and a Company Secretary with the Institute of Company Secretaries of India.

ANSHUL SAURASTRI

Partner,
Krishna & Saurastri Associates LLP

Anshul Sunil Saurastri is a Partner, Advocate (Attorney-at-Law), and Patent Attorney at Krishna & Saurastri Associates LLP.

Anshul's practice includes both contentious and non-contentious matters in intellectual property and corporate-commercial law. Specifically, he handles patent, trademark and design application preparation and prosecution, oppositions (pre-grant and post-grant) and invalidations (cancelations, rectifications, and revocations). He has handled appellate matters at the Intellectual Property Appellate Board. Additionally, he is regularly involved in litigation before different Courts in India for matters relating to patent, trademark and design infringement, and unfair competition claims such as passing off, disparagement and defamation. He is actively involved in advising on issues relating to the protection of trade secrets, confidential information, data and privacy. He handles complaints and disputes related to consumer protection and advertising. He has hands-on experience in handling breach of contract claims in litigation and arbitration.

Prior to practicing law, he worked as an analyst in an investment firm in the US. He also spent time in the lab doing research and development work, for which he received recognition as an author in different journals and scholarly publications.

ANUPAM SHARMA

Head of Legal
Vivo Energy PLC

Anupam Sharma is the Head of Legal for Vivo Energy PLC in London, UK.

He has broad expertise in commercial contracts, corporate compliance, complex negotiations, company secretarial, strategic transactions, M&A, Oil & Gas contracts, antitrust, trade control, risk management, international litigation, corporate governance and legal department strategy and management. He is a strategic thinker with strong analytical and communication skills.

Anupam has had a 15+ years' commercial career which includes working with a top UK firm and top tier Indian law firms. He has been a key contributor to the senior leadership team of companies and a trusted advisor with broad-based expertise gained from overcoming a wide variety of challenges in numerous legal regimes globally.

Anupam is a dual qualified lawyer (India and UK) with corporate and commercial expertise across Europe, Africa, Middle East and Asia.

APARNA MEHRA

Partner
Shardul Amarchand Mangaldas

Aparna Mehra is a merger control specialist and has led and obtained approvals from CCI in a large number of high profile merger control matters. She has been deeply involved in the finalization of the Indian merger control regime in April-May 2011, wherein she worked closely with the Government of India and the CCI in relation to the draft Combination Regulations and associated exemption measures.

Prior to joining Shardul Amarchand, Aparna was at AZB & Partners for 8 years and was involved in various landmark deals. With razor-sharp technical abilities, Aparna is extremely hardworking, industrious, solution-orientedand always available.

She is a "go to person for merger control" in India with abilities to navigate the regulatory landscape with tenacity. Most recently, Aparna has been involved in proposing amendments to the merger control regime to the CCI in light of the introduction of the time-bound insolvency resolution process under the Insolvency and Bankruptcy Code 2016.

Aparna (along with the CCI) has spearheaded the organization of advocacy roadshows across India on various topics in Mumbai, Delhi and Ahmedabad.

SAM Managing Partner, Mrs. Pallavi Shroff is a member of the Competition Law Review Committee, set up by the Ministry of Corporate Affairs to revamp the Competition Act. Aparna has supported this exercise, in research and deliberations on proposed amendments for merger control.

Aparna devotes and contributes her time to deliver sessions to train young students to develop their interest in Competition Law. She has also co-authored several competition law publications.

ARADHANA SYAL

Partner
Gaggar and Partners

Aradhana Syal has more than 12 years of experience of having worked in a range of areas, including M&A, joint ventures, private equity and corporate advisory. Her skill set includes deep transactional understanding as well as significant industry expertise across industries such as manufacturing, retail, media, fashion, infrastructure and hospitality. She has further experience in end-to-end transactions, advising clients right from the initial stage of deal structuring, negotiating a term sheet, drafting definitive agreements to assisting in closing along with post-closing actions. She has been handholding clients doing business in India – advising them on entry options, funding, compliance matters along with advisory on legal issues that emanate from day-to-day operations of the business.

Her practice also spans sectors including oil and gas/energy and infrastructure laws. She has considerable expertise in advising on the entire spectrum of oil and gas matters, including upstream oil and gas, M&A, regulations, etc. She has extensive experience of advising national and international oil and gas companies/government authorities, international bidders, project sponsors and developers. Aradhana has undertaken several challenging assignments for Fortune Global 500 Companies like ONGC, Gail India Limited, Engineers India Limited, Indraprastha Gas Limited, on the public-sector side.

ARVIND GUPTA

Senior Counsel
Fluor Corporation

Arvind Gupta is a transaction attorney with more than 15 years of varied Global experience primarily in Oil & Gas projects, representing contractors providing Engineering and Construction Services.

Responsible for providing legal support to geographies including the Asia Pacific region (India, China, Thailand, Philippines, Indonesia, Bangladesh, Sri Lanka, Middle East) and Australia. As APAC regional Senior Legal Counsel of Fluor Corporation, he advises on pursuits in EPC, EPCM, FEED and other ancillary study contracts inter alia in Energy & Chemicals business, in Lump Sum/Reimbursable environment.

He collaborates with horizontal functions such as business management, sales and commercial, finance & treasury, procurement & logistics, commercial strategies on strategic and legal issues. He leads the contract negotiations for various LSTK/EPC/PMC contracts with varied legal and technical complexities.

Having lived and worked in various western jurisdictions has given him exposure to working cultures and across jurisdictions to deal with varied aspects of the Energy & Chemicals business.

He has worked with Leighton Contractors India Private Limited; Nishimura & Asahi, Tokyo; Hero MotoCorp Ltd, India; and Amarchand & Mangaldas & Suresh A. Shroff & Company.

Arvindh is a BSL, LL.B from Symbiosis Society's Law College, University of Pune, India (2000 to 2005). He has also completed an Executive Programme in Business Finance from IIM Ahmedabad – 2019.

ASHWIN BISHNOI

Partner
Khaitan & Co

Ashwin Bishnoi is a Partner with Khaitan & Co. at their Delhi office.

He is leading lawyer in the field of Corporate laws including M&A and Corporate restructuring focusing on some of most complex such transaction includng the largest ever India De SPAC transaction and the first ever distressed acquisition under India's new bankruptcy code. Prior to joining Khaitan & Co., Ashwin worked at Skadden, Arps, Slate, Meagher and Flom LLP for 4 (four) years in their New York and London offices.

ASMITA NAYAK

Founder & Managing Partner
SM Legals

Asmita Abhijeeta Nayak is currently with SM Legals, Advocates & Consultants.

Prior to that, she was with Suman Khaitan & Co., New Delhi. She has worked with the likes of K K Anand & Associates (Advocates and Solicitors), New Delhi; Swamy Associates, Chennai; and has even practiced independently for a while.

In the long span of 16+ years of practice, she has made successful appearances in over 500+ cases before various judicial forums i.e. The Supreme Court of India, High Courts, Customs, Excise and Service Tax Appellate Tribunal (CESTAT) Principal & Zonal Benches, National Company Law Tribunal (NCLT) Principal & Zonal Benches, Foreign Exchange Management Act (FEMA) Tribunal and so on.

Her pan-India clientele includes Honda Cars Pvt. Ltd., Noida; Jet Lite India Ltd. (Jet Airways), New Delhi; Gas Authority of India Limited (GAIL), New Delhi; Kotak Mahindra Bank Limited, New Delhi & Mumbai; IndusInd Bank Ltd., Mumbai; KMG Group, New Delhi; Jubilee Sports Technology International (Asia) Ltd, New Delhi; Oswal Vinyl Industries Pvt. Ltd, New Delhi; Kalindee Rail Nirman Engineers Ltd, Gurgaon; Ramnath Group, Mumbai & Nagpur; BSNL, Madhya Pradesh; Bharat Aluminium Company Ltd. (BALCO), Chhattisgarh; Tuticorin Port Trust, Tuticorin etc.

She has also been Legal Advisor to various reputed Start-ups like ROYZEZ (E-Commerce Website), Gurugram and INDIGENOUS ENERGY STORAGE TECHNOLOGIES PVT. LTD. (INDI ENERGY), Roorkee.

She has a B.S. L. LLB from the Symbiosis Society's Law College, Pune University (2005)

CHAYAN SARKAR

Partner
KIAA LLP

Chayan Sarkar hails from a family of five generations of lawyers. Completed law from Amity Law School. Worked as a Junior Counsel in 2G spectrum scam cases etc. before co-starting KIAA LLP.

Was part of the founding team of KIAA, LLP and mostly handles litigation in the firm. Was a founding member of the global think tank GCTC (Global Counter Terrorism Council) and was instrumental in establishing the legal framework of the organization.

Chayan was awarded the Alumni Achievers Award by his alma mater, Amity Law School in the year 2017. Extensively argued as well as assisted in a Letters Rogatory case before the Hon'ble Delhi High Court. Chayan was instrumental in arguing before NCLT, NCLAT and the Supreme Court of India and making the Insolvency and Bankruptcy Code, 2016 applicable even to unincorporated joint ventures, eventually changing the legal position on the said subject in the country.

Chayan also successfully argued on behalf of the real estate allottees in the challenge to the Section 5 (8) (f) of the Insolvency and Bankruptcy Code, 2016. Chayan was also instrumental in getting the ex parte bail orders in the Kashh Coin crypto currency scam cases from the Hon'ble Supreme Court of India. Currently handling the Writ Petition in the Hon'ble Supreme Court as well as appearing as the lead counsel in the trial court.

Deeksha Manchanda is a Partner with Chandhiok & Mahajan.

She specializes in advising clients on all aspects of competition law. She has extensive experience in representing clients in merger control, cartel investigations and abuse of dominance cases before the Competition Commission of India, National Company Law Appellate Tribunal, the erstwhile Competition Appellate Tribunal, and the Supreme Court.

She combines her knowledge of competition law with her litigation experience, and has acted for clients before various high courts in jurisdictional and due process challenges. This includes India's first challenge to the legality of a dawn raid.

Deeksha advises clients on commercial agreements, especially on issues relating to exclusivity, and restrictions on online sales, rebates and discounts. Deeksha's experience on merger control includes advising and acting for clients in relation to the notification and approval process in India.

Deeksha also co-leads the Data Privacy Practice at Chandhiok & Mahajan. With her knowledge of law and understanding of technological concepts, clients find her best placed to advise them on various aspects of data protection law.

Some of the clients that Deeksha has provided assistance to include, Whirlpool India Private Limited, Chanel India Private Limited, EM3 Agri Services Private Limited, RoundGlass India and JCB India Private Limited.

DEEKSHA MANCHANDA
Partner
Chandhiok & Mahajan

Deepak Suneja is a Partner with Nitya Tax Associates and has received several in-house awards for his outstanding performance and extraordinary knowledge in the field of Indirect Taxes.

Deepak supervises and leads the Updates Team (Team responsible for preparing all external updates) at NITYA. The Team sent 200+ updates on recent changes and developments in Indirect Tax laws, including a weekly booklet on Legal Precedents of the preceding week. Deepak has experience of over 9 years in advising clients on complex Indirect tax issues, structuring business models and planning supply chain in the field of Indirect taxes.

Prior to NITYA, Deepak has worked with Lakshmikumaran and Sridharan and Price Waterhouse Coopers in their Indirect tax practice. Deepak has experience in handling clients (including Fortune 500 Companies) from varied manufacturing industries including automobile, automobile parts, pharmaceuticals, chemicals etc.

Deepak regularly delivers lectures at various industry forums, associations and industry workshops.

DEEPAK SUNEJA
Partner
Nitya Tax Associates

DHRUV DESAI

Vice President (Transaction Management), Issuer Services Citibank

Dhruv Desai is Vice President (Transaction Management), Issuer Services, Citibank N.A. India. His current responsibilities include: leading all activities for Escrow; drafting/reviewing product-related papers, standard agreements and managing product risk; providing assistance with deal structuring, FEMA (FDI) related matters to clients/intermediaries; conducting FEMA knowledge sessions internally and externally; managing internal and external stakeholders; negotiating agreements for marquee cross-border transactions with time criticality involved; and managing documentary and regulatory risks, ensuring zero transactional loss.

Prior to this, he was SVP & Head Transaction Management, Issuer Services, HSBC (India) wherein he led the team and collaborated in successful closure of more than 150 structured deals; organized and streamlined required documentation to cut TAT by 75%; liaised with regulators on policy matters; managed internal and external stakeholders etc. He was also Vice President, Transaction Management, Issuer Services, HSBC India; Manager, Corp. Finance, Comm. Banking, International Trade Finance, ICICI Bank; Advocate – Real Estate, Civil and Commercial with Rohan Lifescapes Mumbai; and Associate with Divya Shah Associates, Mumbai.

Dhruv has significant experience in corporate legal, transaction banking over a period of 12 years; and has managed several domestic and cross-border transactions and championed various marquee projects. He has been leading a highly skilled team for over two years with the objective of augmenting business. He has been consistently recognized for exceeding client expectations.

Dhruv has a LLM in International Commercial Law from the University of Nottingham and a LLB from the University of Pune. He also has a Diploma in International Commercial Arbitration.

DIPTI LAVYA SWAIN

Partner HSA Advocates

Dipti Lavya Swain is a Partner & Head of China, Singapore, Hong Kong and Taiwan Desks and Corporate Coordinator with HSA Advocates. He has 15+ years of PQE with diversified work experience as a Partner at top tier law firms as well as a General Counsel at an MNC in the highly competitive Indian corporate market.

In his current position, Dipti Lavya's focus is Corporate M&A, PE & VCs, Renewable Energy, Infrastructure, Projects, Start-ups, Electric Vehicles, Data & Fintech etc. Recently, on multiple deals and advisory related matters, he has advised Adani, Allana Group, Renew Power, Mumbai International Airport, Eden Renewables, Oriental Engineering, Coromondel Group, Ashriya Group, Mytrah Energy, I Squared Capital, REC, GAIL, PolyCab Cables, GG Innovation UK, Veken Technology China, Wuhuan China, ByteLearn, Hyve Group UK, Huaqin Technology Hong Kong, Acme Solar, Acme Africa, NITI Aayog, DHI, Start-up Association of India & Invest India & Government of India on several fronts.

He has previously held top positions including Managing Partner, DLS Law Offices; General Counsel of Azure Power (NYSE listed large solar power producer); Partner at Luthra & Luthra Law Offices (now, L&L Partners); Head of Corporate at Wadia Ghandy & Co., New Delhi. In 2011, Dipti moved from Mumbai to successfully Set-up and Head the Corporate Practice of Wadia Ghandy's Delhi offices.

DR. SHIVANI SHRIVASTAVA

Associate Partner
LexOrbis

Dr. Shivani Shrivastava is an Associate Partner with LexOrbis.

A registered patent and trademark agent with over 15 years of experience in handling intellectual property matters, Dr. Shivani works closely with clients and advises them on building and protecting IP. She has expertise working with individuals, start-ups and SMEs. She handles projects related to patentability searches, freedom to operate analysis, drafting and filing patent applications, patent prosecution, trademark filing and prosecution, industrial designs' registration, copyright filing, etc. Apart from managing the IP portfolio of clients, she also assists them in IP valuation, due diligence, technology transfer, and IP licensing.

Dr. Shivani is empaneled with the Government of India as a facilitator under the start-up India scheme to advise and assist DPIIT recognized start-ups. She has assisted start-ups filing more than 400 applications under SIPP (Scheme for Intellectual Property Protection). She has a Ph.D. in Bioinformatics with an LLB degree.

FIRDOUSE QUTB WANI

Managing Partner
LCZF

Ms. Firdouse Qutb Wani is Managing Partner with LCZF and the first Kashmiri Muslim woman to be an Advocate-on-record, Supreme Court of India, that too having qualified in the very first attempt. She is also the first woman to have been awarded the 'M.K. Nawaz Memorial Gold Medal' by the Indian Society of International Law, New Delhi, in 2008 for excelling in International and National IPR Laws.

In 2020, after working tirelessly for several years, and obtaining favorable orders of eviction against Unauthorized Occupants occupying prominent Public Premises, she was appointed as Additional Standing Counsel of Delhi State Industrial & Infrastructure Development Corporation (DSIIDC).

Ms. Wani has been successfully representing Reserve Bank of India, Delhi Government, DSIIDC and Delhi Waqf Board before Hon'ble Apex Court, Delhi High Court, District Courts and Tribunals in several cases of great significance as a Panel Counsel. She represents Private Sector Corporates across the country and has been representing high profile establishments such as Siemens, Eureka Forbes, Ansaldo, and likes for several years now.

Ms.Wani is a regular on various televised & radio programs and webinars, on a myriad of pertinent issues of legal importance and also discussions to empower females to pursue Law and join litigation.

A Law Graduate from Jamia Millia Islamia, Ms Wani also has a Diploma in Corporate laws from Indian Law Institute and a Certificate of specialization in IPR Laws from Indian Society of International Law.

GAURAV MISTRY

Associate Partner
DSK Legal

Gaurav Mistry is an Associate Partner with DSK Legal, having joined DSK Legal in 2012.

Gaurav is a transaction lawyer and focuses on corporate and commercial matters such as mergers and acquisitions in the private and public space, strategic alliances and joint ventures, and investments by private equity and venture capital investors.

Gaurav advises multinational and domestic clients on various matters including structuring, documentation and negotiating complex commercial transactions, more particularly those relating to acquisitions, corporate restructuring, strategic alliances, and other similar transactions including through mergers, demergers, slump sale and asset sale. He actively advises clients on various capital market transactions including offers for sale, qualified institutional placements, and open offers, and is well regarded for his general corporate advisory services to clients in connection with a wide spectrum of laws including company law, securities law, exchange control regulations, takeover regulations, and competition law.

Gaurav's experience is spread across various sectors such as pharmaceuticals, food and beverages, logistics, healthcare, infrastructure, retail, manufacturing, media, microfinance, etc.

He was associated with Khaitan & Co, Mumbai and J. Sagar Associates, Mumbai before joining DSK Legal.

ISH JAIN

Senior Partner
Regius Legal LLP

Ish Jain is a Senior Partner at Regius Legal LLP and is a member of the Bar Council of Maharashtra & Goa since 2009.

Ish possesses rich expertise in litigation - civil, criminal and regulatory and arbitration across diversified areas of banking & finance, corporate and commercial, real estate and construction, and technology. He regularly appears before the Supreme Court of India, High Courts of various states, NCLT and Appellate Tribunals amongst other forums. He is an expert in conducting trials and cross-examinations in high stake civil and criminal cases. He has handled several disputes involving multiple litigations and parties with conflicting and complicated pleadings.

Ish is an Independent Arbitrator and has been empaneled as an Arbitrator by the Bombay High Court.

He has also worked as an Independent Counsel at the Bombay High Court and was associated with a few of India's top-most leading law firms at the beginning of his career.

K Premchandar is a Partner at Anand & Anand which he joined in 2006, and has extensive experience in trademark prosecution, opposition and rectification.

Prem has been exclusively practicing Intellectual Property law since 2006 and has more than fifteen years of rich experience in litigation and prosecution. Over the years, he has advised and managed large portfolios of several Indian-based multinationals in the field of Alcohol & the Beer Industry, Pumps, FMCG and Fortune 500 companies engaged in diverse industries including paints, tobacco products, automobile and consumer goods. He counsels clients on assignments, licensing, co-existence, franchise and other transactions related to intellectual property. He appears for various major US and UK-based clients before the Trademark Office and has obtained several favorable orders.

Prem's work displays a lot of variety from advising and managing large portfolios for diverse industries to engagement in prosecution and litigation, involving complicated matters running into 50 opposition proceedings, 10 IPAB proceedings and criminal matters. A notable area of his work is his travel to remote locations in the northeast region for IP matters and his engagement in drafting and prosecuting geographical indications matters before the GI registry.

K PREMCHANDAR
Partner
Anand & Anand

Moiz K Rafique is Managing Partner at Privy Legal Service LLP.

After a few years of apprenticeship, Moiz started his own Firm, Privy Legal Service LLP in Ahmedabad, Gujarat. With a sharp mind and keen commercial sense, Moiz grew from strength to strength, appearing before almost all judicial forums on a wide range of subjects including Constitutional, Civil, Criminal, Commercial and Corporate matters. Moiz further solidified his name in the fraternity by defending causes requiring attention of Hon'ble Courts and further acquiring immediate protection. He has argued uncommon issues and has succeeded in getting reliefs not limiting to such achievements. He has also negotiated with financial institutions and settled debts in an unprecedented manner.

Moiz has earned a reputation in the bottling and beverage, bottling machine, bottling machine manufacturing, ceramic, dye and mold, cigarette manufacturing and pesticide industries. Moiz renders pro-bono services to many religious and charitable trusts and has been engaged by several families to settle their family partitions. He contributes to several international journals and is also an active columnist for several reputed dailies.

Moiz graduated in Law (Hons) with a focus on Constitutional Law from Nirma University, going on to complete his Masters in Law in Space and Telecommunication Law in 2017 securing First Rank and completing his Masters in Law in Security and Defence Law in 2021, acquiring both from NALSAR University of Law.

MOIZ K RAFIQUE
Managing Partner
Privy Legal Service LLP

MUMTAZ BHALLA

Partner
Economics Law Practice

Mumtaz Bhalla is a Partner with Economics Law Practice and has over 13 years of experience in the field of litigation and dispute resolution. Mumtaz specializes in Domestic and International Arbitrations. She has a considerable amount of experience in the aviation sector, medical sector, real estate, construction, and civil-commercial sector, with her being the preferred choice for several domestic and international clients. She possesses a wide range of experience in civil trial, criminal trial, appeals, consumer disputes, domestic and international arbitration. She specializes in conducting compliance workshops for companies and is a Speaker at various conferences and events.

She has advised and represented several multi-national companies and organizations regarding appropriate strategies to be adopted at various stages of litigation and arbitration. Mumtaz usually argues her own matters and regularly appears before the Hon'ble Supreme Court of India, various Hon'ble High Courts across the country, District Courts and quasi-judicial forums. She also appears before various Consumer Protection bodies such as National Consumer Disputes Redressal Commission, New Delhi (NCDRC), State Consumer Disputes Redressal Commission (SCDRC).

Mumtaz started out in June 2008 as a Junior to Late Shri. Arun Jaitley, Senior Advocate and Former Finance Minister of India, then moving on to L&L Partners Law Offices (formerly known as Luthra & Luthra Law Offices) where she handled Dispute Resolution and Litigation. She became a Partner Designate in 2016 and became a Partner in 2017, being one of the youngest Partners during her time.

NEHA RAMANI

Partner
LexOrbis

Neha Ramani is a Partner at LexOrbis Mumbai. With over 9 years of experience, Neha has acquired proficiency in drafting and prosecution of patent applications in the Biotech, Life Sciences and Pharmaceutical domains and regularly advises national and international clients on filing and prosecution strategies in India. She has advised and assisted several clients in obtaining permissions from the National Biodiversity Authority.

Neha regularly advises clients in managing their national and international brand portfolios. She is responsible for large IP portfolios from various industries including Pharmaceuticals, Hi-tech, Software, Automobiles and Liquor. She works with several upcoming startups and guides them with securing their IP and with all their legal and contractual requirements. She is a registered Patent Agent and a Lawyer registered with the Bar Council of Maharashtra and Goa.

Neha has a Masters in Intellectual Property from the University of New Hampshire Franklin Pierce School of Law, USA. She has a BSc (Hons) degree in Biochemistry and Pharmacology from the University of Strathclyde, Glasgow, UK.

NITIKA CHHABRA

Senior Legal Counsel,
Tesla India

Nitika Chhabra is the Senior Legal Counsel at Tesla India.

Nitika has over 13 years of experience in total and prior to moving in-house with Tesla India, she worked with Trilegal for about 7 years. While being at law firms, Nitika has represented and advised leading multi-national and Indian companies on a large number of transactions and compliance issues across various sectors including telecom, insurance, banking, manufacturing, automobile and defence. She also worked closely with many multinational organizations on issues ranging from day-to-day corporate and operational matters, regulatory and licensing and compliance issues to big-ticket commercial transactions. Nitika has a very wide array of experience and her key focus areas have been regulatory and policy advisory, compliance, commercial contracting, strategic advisory and public procurement and M&A.

POOJA VATSH

Legal & Integrity Leader
Nielsen

Pooja Vatsh is the Legal & Integrity Leader at Grace Note, a Nielsen Company (affiliate of A C Nielsen). Her role at Nielsen encompasses handling legal matters for the India, Jordan & Bangladesh businesses. She heads the Internal Complaints Committee at Nielsen.

Pooja's leadership and ability to carry the team with her persistence and calm nature during the most stressful times during the entire transaction has been recognized at global platforms within the Nielsen system. During her stint in Nielsen, she played a pivotal role in the demerging of the Nielsen business in Sri Lanka.

Pooja has been successful in quickly gaining the support and confidence of all internal and external stakeholders. Her adaptable nature to manage to work with multiple stakeholders in different jurisdictions and time zones, during the lockdown has been highly appreciated.

With over a decade's experience in media, before Grace Note, Pooja has had enriching stints with Shemaroo, Star India and Evalueserve.

She has worked on a variety of matters including Mergers, Strategies (both domestic and cross-border), Key Clients' Management, Contracts' Drafting & Negotiations, IPR, Business Advisory, Real Estate Transactions, Legal Compliances and Training Associates on policy matters, amongst others.

Pooja has completed her LLB in the year 2010 from Bharati Vidyapeeth (deemed university) Pune.

PRIYAM SINGHVI

General Manager Legal
Schindler India

Priyam Singhvi is the General Manager – Legal of Schindler India Private Limited.

In her current role, Priyam has been instrumental in obtaining interim relief for the Directors and senior officers of the company through virtual hearing in a money laundering matter. During the pandemic, her special focus was unlocking cost optimization via a strategy to resolve disputes amicably to cut on costs of litigation and contribute to profitability by making recoveries.

They were able to achieve a 135% recovery target for the year. With most employees working from home, she and the legal team drove a project for reduction in rental fees. They also took up review of all sales contracts pan-India to revisit and invoke in a timely manner force majeure clauses. They were an integral part of the crisis management team and played an active role in interpreting COVID directives and compliance thereof.

Priyam has a B.S.L LLB from Symbiosis Society Law College Pune and a MBA in HR from GSIMR, Indore.

PRIYANKA SHETYE

Contract Manager,
Allianz Services Romania

Priyanka Shetye is the Customer Contract Manager at Allianz Technology SE (Romania) and is expected to relocate to Bucharest in October 2021.

In this role, Priyanka will improve the Customer Contract Governance at Romania branch as well as contribute in standardizing customer contract management process at Allianz Services globally using her legal drafting and governance expertise. This opportunity is intended to develop Priyanka's leadership skills while managing stakeholder expectations across the globe and ensuring compliance with local laws in Europe, India and Mauritius. Priyanka gained this opportunity, based on her consistent performance and customer-centric behavior since joining Allianz Technology SE (India Branch) in June 2018.

Prior to this, Priyanka led the Legal Function at Allianz Technology SE (India Branch) and its subsidiary, Allianz Services Private Limited. In this profile, Priyanka collaborated with other governance functions namely, compliance, data privacy, information security and risk & controls, and improved the Contract Management for customer as well as procurement segments and Local Policy Governance Mechanism.

Prior to joining Allianz in India, Priyanka served in her entrepreneurial venture as "Corporate Legal Advisor". Before this, Priyanka worked at Cummins India Limited (a listed entity) where she started her career as a Legal & Secretarial Consultant in April 2009 and over a period of approx. 8 years, gained responsibility as Executive Manager – Legal & Assistant Company Secretary.

RAJEEV VIDHANI

Partner
Khaitan & Co.

Rajeev Vidhani is a Partner in the Banking & Finance and Insolvency and Restructuring practice group in the Mumbai office of Khaitan & Co.

Rajeev has been with Khaitan & Co for almost 12 years except for a brief stint with the Global Loans team of Ashurst, Sydney, in 2019.

He has represented leading banks, financial institutions, AIFs, Mutual Funds, family offices and other investors and corporations on documenting financing transactions, syndicated lending (both secured and unsecured) transactions, inter-creditor and subordination issues, guarantees, security, debt issuances, and other aspects of domestic and cross-border financing transactions.

He has also been advising clients regularly on insolvency, enforcement and restructuring issues including those relating to SARFAESI, the Insolvency Code, the Prudential Framework for Resolution of Stressed Assets introduced by the Reserve Bank of India on 7 June 2019 and other analogous schemes issued from time to time. Some of his recent representations include advising Vedanta Limited on its successful resolution plan under the Insolvency and Bankruptcy Code, 2016 (IBC) for debt aggregating to approx. ₹140 billion, and TCG Group on its successful resolution plan under IBC for Garden Silk Mills Limited for debt aggregating.

RUPESH MISHRA

Executive Director – Legal (Private Equity)
StarLaw LLP

Rupesh is Executive Director – Legal (Private Equity) at StarLaw LLP.

The highlights of Rupesh's career include working on some complex and marquee transactions in India as well as overseas (China, Singapore, Mauritius, Philippines, Indonesia, Malaysia, Germany, Switzerland, UK and the USA) and across sectors (including education, retail, real estate, IT, data centers, food and beverages, financial services, healthcare and pharmaceuticals).

As a lawyer, he aspires to move beyond the narrow technician tag and be a proactive and trustworthy partner rather than someone who is reactive and deals with problems when they arise. He perceives his role as more about serving the relevant stakeholders everyday by engaging with the business partners to find solutions to maximize the business opportunities within the organization's risk appetite and add value by being a business enabler, while retaining focus on risk management, compliance and good practice.

He possesses more than 14 years of post-qualification experience. He joined Everstone Capital in August 2014 after a stint of approximately 7 years at Khaitan & Co (Mumbai/Delhi, India).

He has a strong inclination towards legal research, analysis and writing.

He enjoys running, playing table tennis and volleyball and watching action and sci-fi movies in his leisure time. He is passionate about animals and nature.

SAMIR MALIK

Partner
DSK Legal

Samir Malik is a Partner with DSK Legal with extensive experience of more than 11 years in varied areas of law.

Samir primarily specializes in Energy, Regulatory & Policy Litigation and Dispute Resolution.

He has vast experience of having strategized and prosecuted several high stake litigations of national importance on behalf of prominent players in energy, infrastructure, banking, real estate and media & entertainment sectors.

He has substantial experience of appearing and conducting cases before various courts, tribunals and quasi-judicial bodies pan-India. He has undertaken litigations concerning a wide range of subjects including Electricity, Arbitration, Intellectual Property, Contract, Real Estate, Securitization, Banking and Corporate Laws.

He has also steered, negotiated and closed various debt transactions worth hundreds of crores in the power sector, on behalf of leading financial institutions and banks.

SANDHYA SINGH

Partner
Anand & Anand

Sandhya Singh is a Partner with Anand & Anand and has significant experience as a trademark practitioner and a brand specialist.

She handles large volumes of client portfolios and specializes in providing tactical advise on handling global trademark portfolios, advising on brand guides, providing advise on brand adoption, monetization, protection and enforcement, advising on various commercial transactions and related disputes. She renders opinions on Trademark law to various industries with particular emphasis on Automotive, FMCG, Consumer Electronic, Fashion and Food companies. She has advised companies in several sectors in relation to protection, growth, visibility and sustainability of their brands.

She has valuable experience in drafting various Commercial Agreements including Franchise Agreement, Placement Agreement, and License and Service Agreement and has advised various companies in relation to establishment of their business. During the pandemic, she is also actively working with several Small and Medium-Sized Enterprises in establishing and growth of their Intellectual Property in India and SAARC region.

Sandhya's experience also includes recordal of trademarks with the Customs Authority for monitoring the infringement of brands and further includes giving opinion on copyright infringement and issues pertaining to plagiarism. She also has experience of handling domain name disputes and has counseled clients related to such issues.

Associated with Anand and Anand since 2006, Sandhya is a member of International Trademark Association (INTA) and is currently serving on the Well-Known Trademarks Committees of INTA.

SAPNA CHAURASIA

Partner
TMT Law Practice

Sapna Chaurasia is a Partner at TMT Law Practice and leads the Mumbai operations of the firm. She has more than 15 years' experience working with law firms and in-house. Her primary areas of expertise are Intellectual Property, Dispute Resolution, Media and Entertainment, employment issues and internal compliances by companies. In her current role, she advises clients on pre-production, production and post-production of cinematographic film, television shows and web-series and provides end-to-end transactional support including legal review of script, due diligence, structuring, drafting and negotiating development agreements, production agreements, artist agreements, amongst others. She advises clients in relation to acquisition and syndication of content for satellite and/or digital exploitation.

She advises clients on arbitration including initiation of arbitration, securing interim reliefs and representing clients before arbitrators. She advises clients and represents leading broadcasters on issues relating to amendments introduced by the Telecom Regulatory Authority of India, royalty issues under the Copyright Act 1957, and proceedings seeking to regulate content available on OTT platforms. She also advises clients on commercial disputes including initiation or defending proceedings before Court; conducts due diligence of immovable property and drafting Sale Deed, Lease Deed, amongst others; and advises clients on compliance requirements under the Sexual Harassment of Women at Workplace (Prevention, Prohibition & Redressal) Act, 2013.

SHAHEZAD KAZI

Partner
S&R Associates

Shahezad Kazi is a Partner with S&R Associates.

His practice includes commercial and real estate litigation, domestic and international arbitration, regulatory matters including before the Securities and Exchange Board of India and the Securities Appellate Tribunal, as well as the National Company Law Tribunal.

Prior to joining S&R, Shahezad practiced before the Bombay High Court and has previously worked with A&L Goodbody in Dublin.

SIDDHARTH MODY

Partner
Desai & Diwanji

Siddharth Mody is a Partner with Desai and Diwanji, Mumbai.

In his current role, he looks into mergers, amalgamations, asset and business purchases and sales, securities sales and purchases, buy-outs, joint ventures and strategic buyouts with advise extending to corporate governance issues, transaction structuring, anti-trust and competition laws, FDI issues and SEBI regulations. The sectors he covers include healthcare, hotels and hospitality, auto and auto ancillary, real estate, pharmaceuticals, media & entertainment and power/roads in infrastructure. His mandate is to act on the buy/sell side in primary and secondary market transactions. He has advised both strategic financial investors and Indian promoters.

His practice areas include mergers and acquisitions, co-investments; private equity, venture capital, joint ventures and foreign investment; general corporate advisory; arbitration; real estate, power and infrastructure.

He has a LLB from the Government Law College, Mumbai.

TUSHAR MEHRISHI

Technology Lawyer
Thought Partner and
Emerging Leader

Tushar Mehrishi is a technology lawyer, thought partner and emerging leader.

A 2007 graduate from NLU Jodhpur, he has worked at Wipro, Google and Airbnb and considers himself an in-house counsel with significant expertise in the technology space.

His last role was with Airbnb as their country counsel for India. In this role, he was responsible for building the legal function for them in India and looking at all their legal issues end-to-end. He was also the legal counsel for Airbnb's Capability Centre in India and instrumental in it taking shape in India and establishing its legal function.

He has also recently written an article in Super Lawyer on 'Tips for Cracking Job Interviews', which was very well received.

VANDANA SETH

Vice President
Tata 1MG

Vandana Seth is Vice President of Tata 1mg and is currently heading the complete legal, secretarial and compliance vertical of TATA 1MG Group.

In her role, she end-to-end manages the entire legal, regulatory, compliance, secretarial, fundraise, IPR and certain operational aspects.

She is a part of the women leadership team at 1MG Group as well as for multiple entities/group companies. Key specialization areas i.e. legal compliance policy/regulatory process validation and implementation IP, fundraise, acquisition telecommunication, legal process automation, POSH matters and secretarial function.

She has 10 years of post-qualification experience in managing the transactions and mergers/acquisitions streams.

Prior to joining 1MG, she was part of Deloitte (M & A team) and Themis group (VC and PE investments). She has comprehensive experience of all fields across.

She has completed her graduation, CS and post-graduation in the year 2007, 2009 and 2010 respectively.

VINEET SHINGAL

Partner
Khaitan & Co

Vineet Shingal is a Partner in the General Corporate, M&A and PE/VC group in the Mumbai office of Khaitan & Co.

He has advised several clients on strategic acquisitions, private equity and venture capital investments, promoter exits and sales (especially on bid situations), corporate restructurings, foreign investment laws and general corporate law advisory. He has advised various start-up and growth stage companies on investments.

He is a partner in the Japan desk of the firm and was on secondment to the Tokyo office of Nagashima Ohno & Tsunematsu in 2010, where he was responsible for advising Japanese clients on India entry as well as acquisitions of/investments in Indian companies. He continues to advise Japanese companies on Indian law.

TO ALL WINNERS

THE SINGAPORE COURTS AND MINIMAL CURIAL INTERVENTION IN ARBITRATION

The Singapore courts will be careful to respect and uphold the principle that the courts will not interfere with the decisions of arbitral tribunals, save in limited areas such as matters of jurisdiction or public policy

INTRODUCTION

1. Parties at the losing end of arbitration awards have increasingly sought to find novel and creative means to avoid complying with arbitration awards that they disagree with. As a major center for international arbitration, the Singapore courts have seen their fair share of applications in which parties have essentially sought to have the courts revisit the merits of tribunals' decisions, albeit through actions framed as applications for declarations or to set aside awards. However, the Singapore courts have repeatedly emphasized that the scope for judicial intervention in the decisions of arbitral tribunals is limited. This article illustrates the approach of Singapore courts, with reference to some recent decisions where Indian parties or interests were involved.

BBA V BAZ[1]

2. This decision of the Singapore Court of Appeal arose out of the sale of a controlling stake in a company, described as India's largest manufacturer of generic pharmaceutical products, from a group of sellers to a Japanese corporation.[2] The majority of the tribunal found the sellers jointly and severally liable to the buyer for more than ₹25 billion in damages for fraudulent misrepresentation.[3]

3. The sellers sought to set aside the award arguing, amongst others, that the majority of the tribunal, in awarding damages and/or pre-award interest, breached a prohibition in the arbitration clause against awarding "punitive, exemplary, multiple or consequential damages"[4]. The Court of Appeal, however, refused to revisit how the tribunal quantified damages, emphasizing that even if the majority erred in its approach to quantification (for example, in the majority's understanding of the relevant legal principles or in choosing a discount rate to account for the 'present day value' of money), this went to the substance or merits of the award[5].

4. Some of the sellers, bringing a separate appeal, also argued that finding them jointly and severally liable for the full amount of the Award was in breach of natural justice, in excess of the Tribunal's jurisdiction, and/or contrary to Singapore's public policy.

5. The Court of Appeal dismissed these arguments, holding that the majority's finding of joint and several liability did not amount to an egregious error of law or a breach of public policy. The Court of Appeal reiterated that the principle of minimal curial intervention did not permit the courts to correct errors on the tribunal's part,[6] and that "mere errors of law do not cross the high threshold of making out a breach of Singapore's public policy".[7] The Court commented that these sellers were essentially attempting to recast an error of law as a breach of public policy, and noted that such arguments had been rejected in previous decisions of the Singapore courts.[8]

HIMALAYA FOOD INTERNATIONAL LTD V SIMPLOT INDIA LLC AND ANOTHER[9]

6. This decision of the Singapore High Court arose out of an arbitration concerning a joint venture company incorporated in India. The tribunal found for Simplot against Himalaya on the basis that there had been breaches of certain obligations relating to the performance of factory equipment for the processing of potato products. Himalaya sought to set aside the award on the basis that the award dealt with matters not submitted to the tribunal, namely that the tribunal found the equipment had to be capable of producing "quality" products where there were no express warranties in the contract to "quality".[10]

7. However, the High Court observed Himalaya's position was premised on a particular interpretation of the relevant contract, and Himalaya was asserting that the tribunal could not have

1 BBA and others v BAZ and another appeal [2020] 2 SLR 453.
2 Ibid. at [1].
3 Ibid. at [17]–[18].
4 Ibid. at [30].
5 Ibid. at [40]–[41] and [50].
6 Ibid. at [103].
7 Ibid. at [102].
8 The Court of Appeal noted that this was particular since its earlier decision in PT Asuransi Jasa Indonesia (Persero) v Dexia Bank SA [2007] 1 SLR(R) 597.
9 [2021] 3 SLR 1188.
10 Ibid. at [13] to [16].

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interpreted the contract otherwise. This was essentially arguing that the tribunal made an error of law.[11] Indeed, the Court stated that Himalaya's application was "a challenge to the substantive correctness of the tribunal's decision; it is a backdoor appeal".[12] Before the tribunal, the parties had clearly submitted on the issue of the quality of the potato products manufactured, and therefore it could not be said that the tribunal had decided on an issue outside the scope of the submission to arbitration.[13]

REPUBLIC OF INDIA V VEDANTA RESOURCES PLC

8. This decision of the Singapore courts arose out of an investment treaty arbitration brought by Vedanta against the Republic of India, which was seated in Singapore. The Republic applied for an order from the Singapore courts that the tribunal permit disclosure of documents from that arbitration into a related arbitration brought by entities in the Cairn Group of companies against the Republic, arguing that disclosure of these documents was required to, amongst others, minimize risk of inconsistent outcomes in these two arbitrations, which both related to the same series of corporate transactions. The tribunal had previously largely dismissed the Republic's applications for cross-disclosure.[14]

9. In the first instance, the question before the High Court[15] was whether the Court should grant declarations that disclosure of the documents from the Vedanta arbitration would not breach obligations of confidentiality.[16]

10. The High Court declined to exercise its discretion to grant the declarations sought, opining, amongst others, that the declarations would not be persuasive to the tribunal.[17] In addition, the Court emphasized that it was "acutely aware of the principle of minimal curial intervention", which it considered as part of Singapore's common law of arbitration.[18] The Court considered that since the Republic had already placed and submitted on the issue of confidentiality before the tribunal, the principle of minimal curial intervention was "an especially compelling factor militating against exercising the discretion to grant the plaintiff the declaratory relief which it seeks". Indeed, the Court observed that the Republic had made two applications pursuant to the disclosure regime established in the tribunal's Procedural Order 3.[19]

11. Upon appeal by the Republic, the Court of Appeal[20] held that the High Court correctly rejected the Republic's application, but went even further to hold that, in view of the fact that the tribunal had previously already ruled on the issue of document

11 Ibid. at [2].
12 Ibid. at [33].
13 Ibid. at [16] to [30].
14 Ibid. [17] to [30].
15 Republic of India v Vedanta Resources plc [2020] SGHC 208.
16 Ibid. at [3].
17 Ibid. at [163] to [172].
18 Ibid. at [173] to [174].
19 Ibid. at [175].
20 Republic of India v Vedanta Resources plc [2021] 2 SLR 354.

> ***"While this amendment augments the powers of the Court in relation to arbitration, it also places appropriate restrictions on the exercise of these new powers."***

disclosure and the principle of minimal curial intervention, the Republic's application was an abuse of process.

12. The Court of Appeal noted that permitting parties to seeking court rulings on procedural matters in order for such rulings to be used as a basis for persuading tribunals to reconsider procedural decisions violated minimal curial intervention.[21] The Republic had no basis to invoke the courts' jurisdiction since the tribunal had already decided the dispute that the Republic itself had placed before the tribunal. The application therefore had no foundation.[22] It was also vexatious in relitigating an issue that had the tribunal had already decided upon, and improperly required the court to render an effectively advisory opinion. The application thus violated the principle of minimal curial intervention.[23]

CONCLUSION

13. The above is a brief survey of decisions demonstrating that the Singapore courts will be careful to respect and uphold the principle that the courts will not interfere with the decisions of arbitral tribunals, save in limited areas such as matters of jurisdiction or public policy. This is in order to give effect to parties' arbitration agreements by allowing tribunals the latitude to rule on (and even err on) matters within their jurisdiction.

14. By doing so, the Singapore courts are respecting the intent of Parliament that the principle of minimal curial intervention should be encapsulated in Singapore's arbitration legislation. When amendments were made to Singapore's International Arbitration Act to give courts limited power to grant interim measures in support of arbitration, the Minister of Law had explained:

> "While this amendment augments the powers of the Court in relation to arbitration, it also places appropriate restrictions on the exercise of these new powers.
>
> It is in line with our policy of minimal curial intervention in arbitration proceedings.
>
> The scope of the new powers is limited to interim measures in support of arbitration, for example, interim injunctions to preserve assets. They do not extend to procedural or evidential matters dealing with the actual conduct of the arbitration itself – like discovery, interrogatories, or security for costs. These procedural matters fall within the province of the arbitral tribunal and must be decided by the tribunal itself. [...]

Once the tribunal is able to act, it should be accorded primacy. Accordingly, the amendment makes clear that any order granted by the court may cease to have effect, should an arbitral tribunal subsequently make an order which expressly relates to the previous court order. This is in line with our policy of facilitating arbitration and minimizing judicial intervention in the process.

21 Ibid. at [48].
22 Ibid. at [55].
23 Ibid. at [56].

[This amendment] ensures that our arbitration laws are progressive and will boost our efforts to promote Singapore as a leading venue for arbitration."[24]

15. It can thus be seen that the courts' decisions are in line with parliamentary intention to ensure that the courts' powers in relation to arbitration are carefully delineated in order that the principle of minimal curial intervention is not rendered nugatory. This policy set out by Parliament and applied by the courts is needed to give contracting parties the certainty that their arbitration agreements will be respected and given effect to by the courts. Ultimately, Singapore's Parliament and courts see this approach as essential towards building a jurisprudence that upholds arbitration as an effective means of dispute resolution, and maintains Singapore's reputation as an arbitration-friendly jurisdiction and a preferred seat for arbitrations.

16. For disputing parties, one immediate implication of the principal of minimal curial intervention is increased certainty, as parties to an arbitration have the benefit of knowing in advance that the chances of a tribunal's award being revised or reversed by the courts is very much reduced. On the other hand, this also means that parties who submit their disputes to arbitration must be prepared to take the good with the bad. If a tribunal makes procedural decisions a party is unhappy with, or even if a tribunal renders an award that a party considers was wrong on the law, there is little room for the courts to revise the award on these grounds alone.

24 Second Reading of the International Arbitration (Amendment) Bill, 19 October 2009, columns Parliament No. 11, Session No. 2, Volume No. 85, Sitting No. 12, 1628 to 1629.

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U.S. Discovery In an Indian Litigation?

28 USC SECTION 1782

Because of the width and breadth of US discovery procedure, a number of cases are settled before they go to trial. Such a procedure is provided for under 28 USC Section 1782

As all original side lawyers in India know, discovery is very narrow and restricted under the Code of Civil Procedure, 1908 ("CPC"). It cannot be "roving and fishing". An affidavit of document is conclusive except in limited circumstances. Interrogatories must be relevant and there is no discovery by deposition[1]. However, if you are suing or going to sue an entity or person from United States of America ("US") or are being sued by such person or entity in India, you can file an application in a US Federal Court to get US style discovery from such person or entity. US discovery procedure is extensive, can give much broader access to the US persons or entity's document and allow you to examine their witnesses and other relevant persons before you get to a trial. Additionally, such a procedure can be followed not just in a court of litigation but also in quasi-judicial or criminal investigations being conducted on the complaint of an Indian person or entity. Because of the width and breadth of US discovery procedure, a number of cases are settled before they go to trial. Such a procedure is provided for under 28 USC Section 1782.

28 USC SECTION 1782 PROVIDES

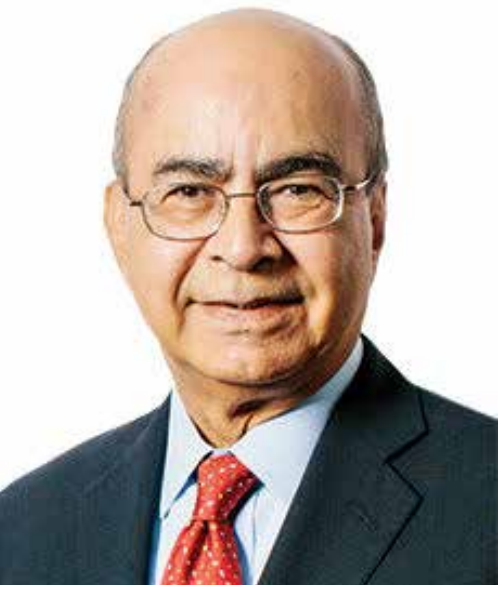
"(a) The district court of the district in which a person resides or is found may order him to give his testimony or statement or to produce a document or other thing for use in a proceeding in a foreign or international tribunal, including criminal investigations conducted before formal accusation. The order may be made pursuant to a letter rogatory issued, or request made, by a foreign or international tribunal or upon the application of any interested person and may direct that the testimony or statement be given, or the document or other thing be produced, before a person appointed by the court. By virtue of his appointment, the person appointed has power to administer any necessary oath and take the testimony or statement. The order may prescribe the practice and procedure, which may be in whole or part the practice and procedure of the foreign country or the international tribunal, for taking the testimony or statement

1 Federal Rules of Civil Procedure and State Rules allow both sides in a civil litigation to summon and examine witnesses before a trial and in the presence of reporter by using a procedure called discovery by deposition.

or producing the document or other thing. To the extent that the order does not prescribe otherwise, the testimony or statement shall be taken, and the document or other thing produced, in accordance with the Federal Rules of Civil Procedure. (emphasis applied)
A person may not be compelled to give his testimony or statement or to produce a document or other thing in violation of any legally applicable privilege.

This section allows a person or entity sued or about to be sued by a US person or entity or who sues or is about to sue a US person or entity in a country outside US to get broad US discovery from such person or entity through a Federal Court in US.

The United States Supreme Court, in Intel v. Advance Medical Devices ("AMD"), 542 US 241, dealt with a request for discovery filed by AMD against Intel under S. 1782 in connection with an antitrust complaint filed by AMD with European Competition Commission. The Supreme Court held that (i) AMD is an "interested person"; (ii) The Competition Commission is a "Tribunal" when it acts in a first instance; (iii) the "proceedings" for which the discovery is sought need not be pending or imminent but must be in reasonable contemplation, and most important, (iv) §1782(a) contains no threshold requirement that evidence sought from a federal district court would be discoverable under the law governing the foreign proceeding. In other words such documents and depositions can be taken even if they are not discoverable under the laws of the country



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> **"if you are suing or going to sue an entity or person from United States of America ("US") or are being sued by such person or entity in India, you can file an application in a US Federal Court to get US style discovery from such person or entity."**

where the proceedings or proposed proceedings will take place. The only exception is that the discovery should not be in violation of any legally applicable privilege.

The US courts have gone further[2] and have allowed discovery of documents held by a subsidiary of the US entity outside US. Two US Courts of Appeal have held that S. 1782(a) allows discovery of documents held by branches or subsidiaries of the US entity outside US.

One other significant advantage of using Section 1782 is that an Indian entity does not have to wait for litigation to start against the US person or entity. An interested person can make such a discovery request before filing a case or starting such a proceeding. In the AMD case the United States Supreme Court held that AMD, which had merely filed a complaint against Intel before the Director General, Competition in Europe could do so before the complaint was investigated and a decision was made to proceed against Intel.

In recent years, there has been an increase in the number of applications filed in US Federal Courts under Section 1782. More foreign persons and entities are filing applications to take advantage of broad discovery laws in US.

2 There is a difference of opinion among courts on the issue of discovery of documents or depositions located outside US at a branch or subsidiary of the US entity under S.1782. At some stage this will be resolved.

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Whether advising Indian companies doing business in the US or American companies faced with commercial and legal challenges in India, Talat's goal is to help his clients remain competitive on both a regional and global scale.

As a member of the Litigation practice group, Talat advises on corporate and commercial transactions (M&A, finance, trade regulations), infrastructure projects, and international litigation (American & Indian law) and arbitration. He also advises U.S. corporations on matters pertaining to Indian business law, banking, direct & indirect taxes, foreign exchange regulations, and foreign direct investment issues. Talat's clients are both India-based clients doing business in the US, including large Indian conglomerates, and US industrial and financial clients doing business in India.

Talat is admitted to practice in both the United States and India. He was born in India, is bilingual in Hindi and English, and currently is based in New York. Talat has proven, time and again, that he is able to synthesize and reconcile American and Indian law, culture, and business.

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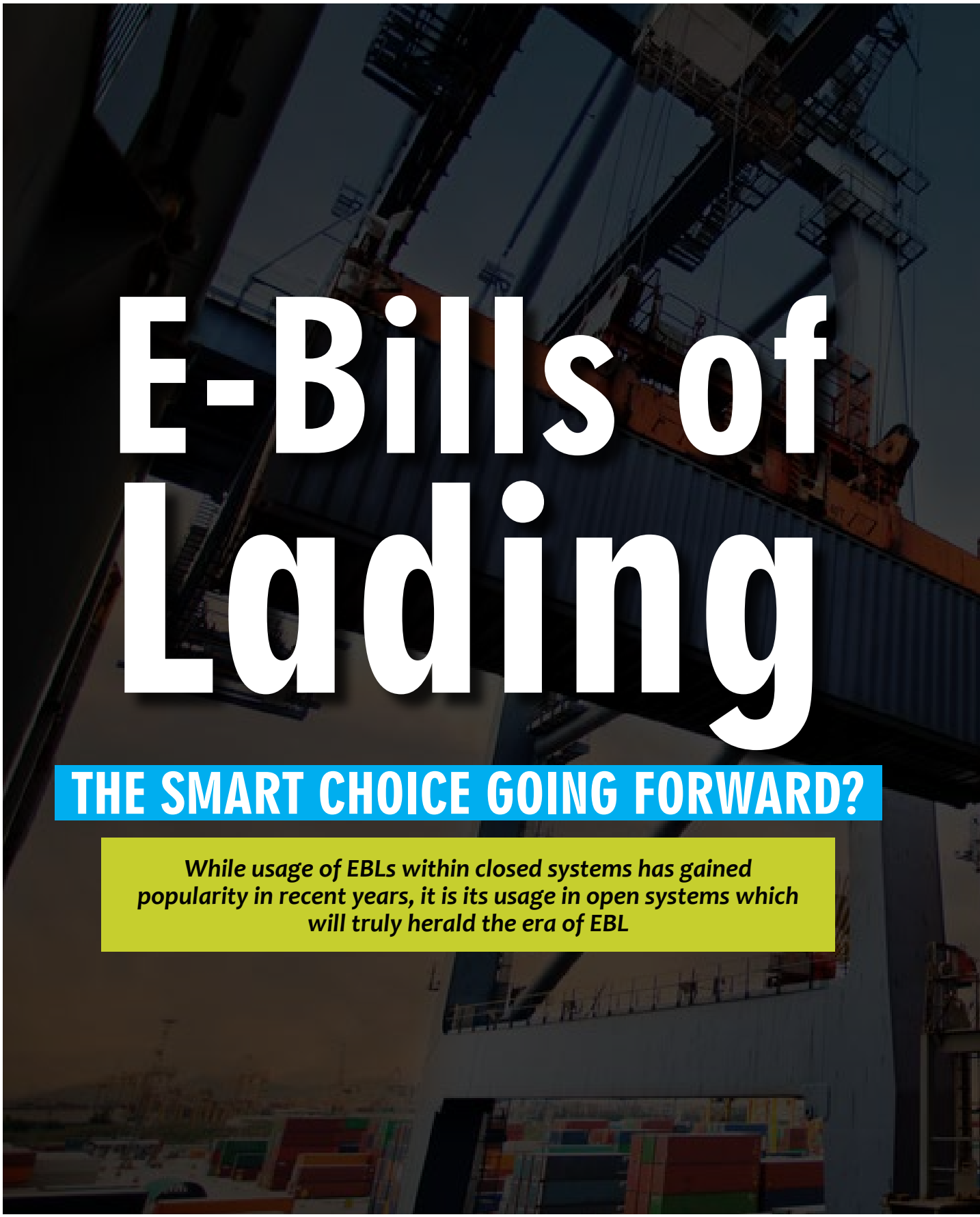

E-Bills of Lading

THE SMART CHOICE GOING FORWARD?

While usage of EBLs within closed systems has gained popularity in recent years, it is its usage in open systems which will truly herald the era of EBL

A bill of lading is an indispensable transport document issued by a carrier to the shipper which serves primarily as a receipt for goods loaded onto the carrier's vessel. Apart from this, the bill of lading frequently evidences the terms of the contract of carriage and, by its endorsement, can transfer not only possessory rights but also rights of ownership on the goods described therein.

Adoption of electronic bills of lading ("EBLs"), as a functional replacement for paper bills of lading, has been touted for a while now and considering the monetary, logistical, and environmental advantages of using EBLs, it is not difficult to see why. An oft cited 2014 study conducted by Maersk followed a refrigerated container from Kenya to the Netherlands and found that over 200 interactions were generated for that shipment alone with over 30 separate actors involved.

Recent strides in information technology have overcome obstacles which previously prevented EBLs from replicating the key functions of a traditional paper bill of lading and EBLs are steadily becoming a genuine alternative.

WHAT ARE EBLs AND HOW DO THEY WORK

Contrary to what many believe, EBLs are not a mere "soft-copy" or electronic version of traditional bills of lading but are, in fact, a series of computer-generated electronic messages which can only be transmitted and deciphered electronically.

While the receipt and contract functions of a bill of lading are relatively straightforward to replicate, the ability for an EBL to transfer contractual and possessory rights over the goods has been a challenge.

Until recently, EBLs could be used effectively only within closed, member-only systems based on a central registry such as Bolero, essDocs or E-Title. These private platforms create a legal ecosystem by requiring its members to sign a multiparty agreement wherein members agree to treat EBLs as a document of title thereby conferring upon the holder of an EBL the same rights and obligations as the lawful holder of a traditional bill of lading. The usage of EBLs in such a 'Registry Model' received a huge boost when the International Group of P&I Clubs approved certain EBL platforms wherein any liability arising under an EBL issued under an approved platform is treated for Club cover purposes in the same way as if it was a paper bill. This requirement of membership is a major obstacle to the 'Registry Model' and none of the existing platforms have succeeded in reaching a critical mass in their membership.

The advent of distributed ledger technology and blockchain has now brought with it the possibility of creating a transferable document with a 'guarantee of uniqueness' even in an open system. Unlike the Registry Model, transactions could take place peer-to-peer on an open platform without the need for prior subscription to any platform thus paving the way to more widespread usage. This 'Token Model' can ensure that there is only one 'holder' of an EBL at any given time and a blockchain based EBL can, in theory, be functionally equivalent to a paper bill of lading. Such a blockchain based EBL could potentially be considered a "Negotiable Electronic Transport Record" as envisaged by the Rotterdam Rules.

ADVANTAGE OF EBLs OVER TRADITIONAL BLS

a) **Costs:** Apart from savings associated with printing and moving the documents, operating costs including storage of cargo at discharge port of cargo will significantly reduce.

b) **Speed:** EBLs are stored in a digital format and can be seamlessly transferred in minutes rather than weeks, which a courier would take.

c) **Security:** Records of transactions are encrypted and stored in secure systems reducing the possibility of the document being forged, manipulated, or stolen. Possibility of human error is also greatly reduced.

d) **Transparency:** Since EBLs can be transferred almost instantaneously, timely delivery of the EBL is assured even for voyages of a shorter duration, eliminating the necessity for letters of indemnity.

e) **Environmental Impact:** Especially considering that bills of lading are usually issued in sets of three, a paperless process is manifestly better for the environment.

LEGAL CHALLENGES

For EBLs to work, either of the two things, namely, appropriate contractual provisions or statutory imposition, are necessary.

Parties to a sale agreement can contractually agree to use an EBL and this arrangement would work amongst the parties involved. If any

> ***"The MLETR gives legal recognition to the use of electronically transferable records both domestically and across borders and seeks to enable their usage as long as they are functionally equivalent to transferable documents and instruments such as bills of lading, bills of exchange, promissory notes and warehouse receipts. The MLETR essentially promotes the equal treatment of electronic records with their corresponding transferable document."***

party fails to honor its contractual agreements, remedies for breach of contract would be available. While this is fine for platforms which rely on contractual mechanisms for their validity, a third-party outside this contractual framework such as a buyer or an endorsee / holder of a blockchain-based EBL would not be able to assert his title over the goods in the absence of an empowering legislation giving him this right.

Under English Law, this empowering legislation which seeks to overcome this problem of privity of contract is the Carriage of Goods by Sea Act, 1992V ("COGSA") gives the 'lawful holder' of a bill of lading all rights of suit under the contract of carriage and allows the 'lawful holder' to sue the carrier directly under the contract of carriage. This legislation would not cover EBLs, since English Law, as it stands today, does not recognize the concept of "possession" of an electronic record and as a holder of an EBL would not be able to rely on the COGSA to give them rights to pursue claims against the carrier.

Section 1 of The Indian Bills of Lading Act, 1856 recognizes the right of a consignee of goods named on the bill of lading and every endorsee of a bill of lading to be vested with all rights of suit and be subject to the same liabilities in respect of such goods as if the contract contained in the bill of lading had been made with himself. While this position is yet to be tested, Indian Courts could differ with the English position as there is no equivalent of the English COGSA in Indian Legislation, with the only requirement to transfer contractual rights being the endorsement of the bill of lading and there is no question of possession of the document. This will of course be subject to the law recognizing the electronic endorsement of an EBL as being legally valid.

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For an electronic bill of lading to be successful in an open system it needs to be supported by a robust legal infrastructure. In 2017, the United Nations Commission on International Trade Law ("UNCITRAL") formulated the UNCITRAL Model Law on Electronic Transferable Records ("MLETR"). The MLETR gives legal recognition to the use of electronically transferable records both domestically and across borders and seeks to enable their usage as long as they are functionally equivalent to transferable documents and instruments such as bills of lading, bills of exchange, promissory notes and warehouse receipts. The MLETR essentially promotes the equal treatment of electronic records with their corresponding transferable document. Only three countries (Singapore, Bahrain and Abu Dhabi Global Market) have adopted the MLETR and, given the cross-border nature of International Trade, widespread acceptance, and adoption of these rules amongst maritime nations will be necessary before EBLs can effectively be used in an open system.

CONCLUSION

While usage of EBLs within closed systems has gained popularity in recent years, it is its usage in open systems which will truly herald the era of EBL. The advent of blockchain which allows EBLs to be functionally equivalent to a paper bill of lading has paved the way for this and it now appears to be only a question of time before EBLs become the norm.

To leverage the numerous advantages that EBLs have to offer including speed, cost and transparency and facilitate its widespread usage within the shipping industry, it is necessary for jurisdictions to create a robust legal framework conducive to the usage of EBLs. The formulation of the MLETR is a huge development in this regard and whether it is swiftly adopted by jurisdictions across the globe is yet to be seen.

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SPECIFIC PERFORMANCE OF CONTRACTS IN NEW INDIA

UNLEARNING OLD CONCEPTS

The exceptional use of the power to grant specific performance and/or injunction against termination seems to be attributable to the fact that the jurisprudence and law relating to specific performance has remained static and settled for decades

The Specific Relief Act, 1963 ("SRA") was amended with effect from 1st October 2018[1] ("2018 Amendment").

THE OLD REGIME

Prior to the 2018 Amendment, SRA conferred wide discretion upon courts to enforce or to refuse specific performance of contracts[2]. This discretion received further impetus from Section 41(e) as per which an injunction cannot be granted to prevent the breach of a contract, the performance of which would not be specifically enforced.

[1] Specific Relief (Amendment) Act, 2018 [Act 18 of 2018]
[2] Sections 10 & 14 (before the 2018 Amendment).

Consequently, in a majority of cases, courts would award damages as a rule and grant specific performance or an injunction against termination as an exception. Broadly, courts often exercised this discretion to refuse specific performance in cases (i) when the contract was, in its nature determinable; and (ii) when compensation in money was an adequate relief to remedy non-performance of the contract.

Indeed, some exceptions were carved out in cases where the contract contained an element of public interest, or if the party terminating the contract was a government entity which had acted arbitrarily or when the contract was for a unique commodity/project[3]. However, by and large, the exercise of discretion to grant specific performance was rarely used.

LEGISLATURE STEPS IN

The wide discretion to refuse specific performance was, as viewed by the legislature, adversely affecting commercial activities such as public private partnerships, foreign direct investments and public utilities infrastructure developments etc. These activities had prompted extensive reforms in related laws to facilitate enforcement of contracts.

The legislature thus felt that SRA was not in tune with the rapid economic growth happening in the country. It therefore, introduced the 2018 Amendment to do away with the wider discretion of courts and to make specific performance of contract a general rule than exception (subject to certain limited grounds)[4].

THE NEW REGIME

By way of the 2018 Amendment, the legislature introduced significant changes in Sections 10 & 14 of SRA[5].

- Section 10 was amended to do away with the discretion of courts; and to make specific performance a rule (except if covered under Sections 11 (2), 14 & 16); and
- Section 14 was amended such that 'a contract for the non-performance of which compensation in money is an adequate relief' no longer remained a ground to refuse specific performance.

WORKING OF THE NEW PROVISIONS

Despite the amendments in Sections 10 and 14, specific performance of a contract or an injunction against termination are frequently opposed on the premise that compensation in money is an adequate relief – even though this ground is no longer available.

Additionally, a ground that 'contract is determinable' continues to be employed like a cliché to oppose an injunction against termination or to oppose specific performance.

"Despite the amendments in Sections 10 and 14 of SRA, specific performance of a contract or an injunction against termination are frequently opposed on the premise that compensation in money is an adequate relief – even though this ground is no longer available. Additionally, a ground that 'contract is determinable' continues to be employed like a cliché to oppose an injunction against termination or to oppose specific performance."

The decisions in Amritsar Gas[6], Classic Motors[7] and Rajasthan Breweries[8], though rendered decades ago, are so deeply embedded in our jurisprudence that the moment there is a prayer for specific performance or a prayer for injunction against termination, these decisions are routinely cited to oppose these prayers.

In Amritsar Gas, the Hon'ble Supreme Court set aside an arbitral award which directed restoration of a distributorship agreement on the ground that the agreement was in its nature determinable and that compensation would constitute an adequate remedy.

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[3] Atlas Interactive (India) Pvt Ltd v. BSNL: 126 (2006) DLT 504; Pioneer publicity Corporation v. Delhi Transport Corporation: 103 (2003) DLT 442; Old Worl Hospitality v. Indian Habitat Center 73 (1998) DLT 374; KSL & Industries Ltd. vs. National Textiles Corporation Ltd. : 2012 SCC Online Del 4189

[4] The Statement of Object & Reasons in the Specific Relief Amendment Bill,

[5] Though some other provisions were also amended, for the purposes of the present article and theme, only these provisions are being highlighted.

[6] Indian Oil Corporation Ltd. v. Amritsar Gas Service: (1991) 1 SCC 533

[7] Classic Motors Ltd. v. Maruti Udyog Ltd.: (1997) 65 DLT 166

[8] Rajasthan Breweries Ltd. v. Stroh Brewery Company : AIR 2000 Delhi 450

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In Classic Motors, the Hon'ble Delhi High Court held that all private commercial contracts, by their very nature, could be terminated even without cause, by giving reasonable notice.

In Rajasthan Breweries, the Hon'ble Delhi High Court (after noting the judgments in Amritsar Gas & Classic Motors), held that even in the absence of a specific clause authorizing either party to terminate the agreement (on the happening of the events specified therein), from the very nature of the agreement (which is private commercial transaction), the same could be terminated without assigning any reason by simply serving a reasonable notice.

The result of the above judgments was that all private commercial agreements could be terminated with or without any 'cause' or 'clause'. And this facet was (and is continued to be) used to oppose an injunction against termination or to oppose specific performance on the ground that the contract is 'determinable'.

MEANING AND ESSENCE OF 'DETERMINABLE' CONTRACTS

The word 'determinable' is not defined in SRA. The Hon'ble Delhi High Court has held that the word 'determinable' used in SRA means a contract which can be put to an end[9].

However, what is significant is that in SRA, the expression 'determinable' is qualified by the words 'in its nature'. Therefore, merely because a contract can be terminated should not mean that the contract is 'in its nature determinable'. This distinction has been recognized by the Hon'ble Bombay, Kerala and Madras High Courts[10] by holding that 'a contract which is in its nature determinable', means that the contract is determinable at the sweet will of a party to it, that is to say without reference:

- to the other party; or
- to any breach committed by the other party; or
- to any eventuality or circumstance.

In other words, these courts have held that the expression 'in its nature determinable' contemplates a unilateral right in a party to a contract to determine the contract without assigning any reason or, for that matter, without having any reason. It is also held that if an agreement is determinable at the happening of an event or on the occurrence of an exigency, then it is on such event or exigency happening or occurring alone that the contract would stand determined[11].

In contrast, the Hon'ble Delhi High Court has held that any contract that could be terminated (with or without cause, breach or eventuality) would be a determinable contract as per Section 14 of SRA[12].

[9] Turnaround Logistics (P) Ltd. v. Jet Airways (India) Ltd: 2006 SCC Online Del 1872 & Kashyap's v. Bata India Ltd. (2013) 137 DRJ 39
[10] Narendra Hirawat vs Sholay Media Entertainment Pvt. Ltd.: (2020) 5 Mah LJ 173; T.O. Abraham v. Jose Thomas, (2018) 1 KLJ 128; Jumbo World Holdings Limited vs. Embassy Property Developments Private Limited: 2020 SCC OnLine Mad 61
[11] T.O. Abraham v. Jose Thomas, (2018) 1 KLJ 128

Use of the words 'in its nature' before determinable by the legislature must hold some significance. Contracts that can be terminated at will/ convenience or by simply giving notice should be the contracts that are by their very nature determinable. But contracts which can be terminated only for cause or on happening of specific events should not generally be treated as contracts which are 'in their nature' determinable.

In the backdrop of the purpose and intent of the 2018 Amendment – i.e. to make specific performance the rule and not an exception - the view thus taken by the Hon'ble Bombay, Kerala and Madras High Courts seems more reasonable and appropriate. Else, it would be impossible to obtain the relief of specific performance, no matter how deserving the facts.

CONCLUSION

The exceptional use of the power to grant specific performance and/or injunction against termination seems to be attributable to the fact that the jurisprudence and law relating to specific performance has remained static and settled for decades. A vast majority of us are conditioned by our training and long practised approach that (i) specific performance will not be granted if compensation in money is an adequate relief; and (ii) any contract which can be terminated is 'determinable' and therefore not specifically enforceable. It is time we unlearn these concepts and view the remedy of specific performance and injunction on termination with a fresh perspective and outside the clutches of the past. It is only then that contracts will have the sanctity they deserve. And it is only then that the parties will have the confidence to conduct business and make significant investments in India.

[12] Beoworld Pvt. Ltd. v. Bang & Olufsen Expansion: I.A. Nos. 3837 and 4434/2020 in CS (COMM) 122/2020 decided on 28 July 2020. See also: Turnaround Logistics (P) Ltd. v. Jet Airways (India) Ltd: 2006 SCC Online Del 1872 & Kashyap's v. Bata India Ltd. (2013) 137 DRJ 39.
Pertinently, the decisions in TO Abraham & Narendra Hirawat, though cited were not accepted by the Hon'ble Delhi High Court in the Beoworld judgment.

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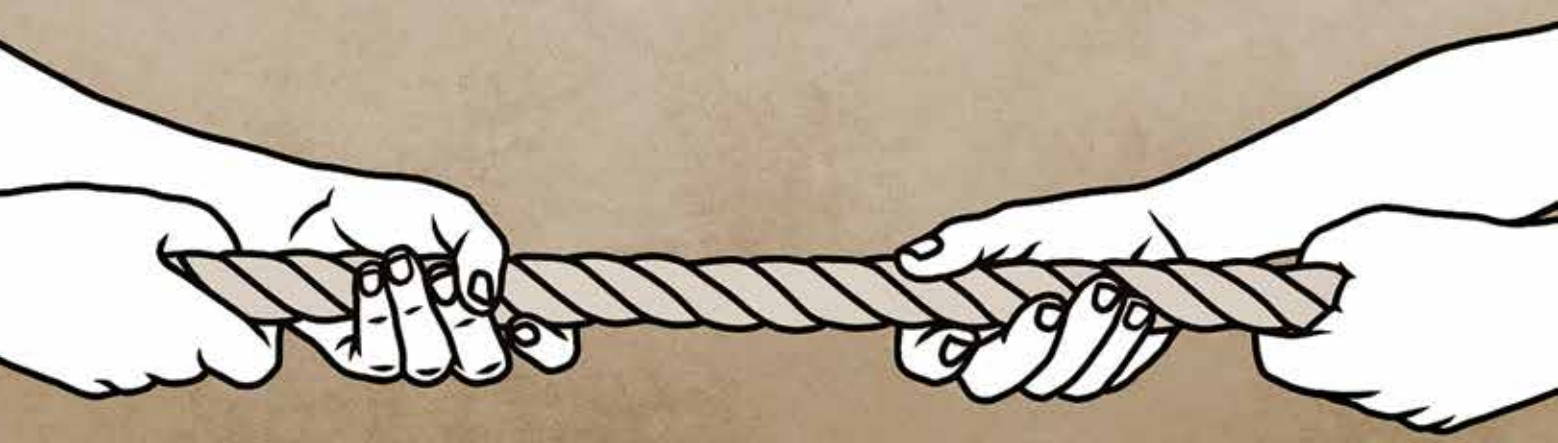
EPIC GAMES VS APPLE

A PRIMER



The order, however, can now enable developers to place hyperlinks/ metadata buttons to their payment processing systems on the application, which can process outside the ecosystem of the application, thereby sidestepping the requirement to deposit a 30% commission on the payment via the IAP system

The rise of Big Tech has transformed the business landscape and has caused a similar swing in the legislative and regulatory strategies to thwart their unchecked proliferation. Antitrust investigations into the operations and activities of Big Tech corporations like Apple, Microsoft, Google, and Facebook have been instrumental in the preservation of consumer welfare.

The European Commission first investigated Apple's rules for application developers on the distribution of apps via the App store, in suspected violation of the European Union competition rules[1][2][3]. The investigation concerned itself with the mandatory use of Apple's own proprietary in-app purchase (IAP) system and the restrictions imposed by Apple on the ability of developers to inform to the iPhone and iPad users of any cheaper, alternative purchasing options from outside of the app ecosystem per se.

BACKGROUND

Apple, Inc. which owns the iOS ecosystem, and is also the proud manufacturer of Apple products, namely, the iMac, MacBook, iPhone, iPad mandates the developers to enter into an Apple's Developer Agreement (ADA) in order to allow the entities to host their apps on the App Store. The Agreement, generally, requires the developers to distribute their applications solely through the App Store for the iOS interface, and further imposes a 30% revenue sharing fee, for any in-app purchase/s made by the consumer. The Agreement further stipulates that any in-app purchase sought to be made by the consumer, shall solely be facilitated by Apple's proprietary IAP system, to the exclusion of any other payment system provider. This creates a very closed ecosystem, which not only facilitates the hosting of the apps on their platform, but also provides a related payment mechanism for the purposes of closing transactions, which is directly linked to the preferred payment details of the end users, as registered with Apple. It is to be noted that in event where the settlement of funds is managed as a post-facto consideration, and where Apple remits the 70% to the developers, and retains the 30% commission, there is very little that a developer can actually do when relying upon the Apple IAP system.

Epic Games is one of the prominent video game developers, and one of their popular games, "Fortnite"[4], implemented a 'hotfix' which offered the consumer an alternate mode of payment from the IAP system, at a cheaper rate, in violation of the ADA. Upon cognizance of this action from Epic Games, Apple removed the application from its App Store, which was termed by Epic Games as anticompetitive and an abuse of Apple's dominance in the market. In the matter of Epic Games, Inc. v. Apple Inc.[5], Epic Games submitted that the:

- Restrictions imposed by Apple prohibiting distribution of iOS applications for Apple's iPhone and iPad devices outside the App Store;
- requirement to allow In-app transactions for digital content to be made exclusively using Apple's IAP system, on which Apple levied a 30% commission on all transactions; and,
- Anti-steering provisions that restrict app developers from informing users of alternate payment mechanisms outside of the App Store.

Amounts to a violation of Section- 1[6] and 2[7] of the Sherman Act[8] and is further violative of the California Cartwright Act[9] and the California Unfair Competition Law[10].

1 https://ec.europa.eu/commission/presscorner/detail/es/ip_20_1073
2 https://www.cnbc.com/2021/03/04/apple-faces-antitrust-probe-in-the-uk-over-app-store-policies.html
3 https://www.forbes.com/sites/siladityaray/2021/09/02/apples-app-store-fees-now-face-antitrust-challenge-in-india/?sh=458a1fec3622
4 Hotflixes refer to software patches that are applied to systems, which are currently running; typically used to implement a fix for a critical business scenario.
5 Case No. 4:20-cv-05640-YGR; available at: https://cand.uscourts.gov/wp-content/uploads/cases-of-interest/epic-games-v-apple/Epic-v.-Apple-20-cv-05640-YGR-Dkt-814-Judgment.pdf.
6 Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal. Every person who shall make any contract or engage in any combination or conspiracy hereby declared to be illegal shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by fine not exceeding $100,000,000 if a corporation, or, if any other person, $1,000,000, or by imprisonment not exceeding 10 years, or by both said punishments, in the discretion of the court.
7 Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by fine not exceeding $100,000,000 if a corporation, or, if any other person, $1,000,000, or by imprisonment not exceeding 10 years, or by both said punishments, in the discretion of the court.
8 An Act to Protect Trade and Commerce Against Unlawful Restraints and Monopolies, 15 U.S.C. §§ 1–7.
9 The Cartwright Act is the primary California state antitrust law prohibiting anti-competitive activity. The Cartwright Act prohibits any agreements among competitors to restrain trade, fix prices or production, or reduce competition. Private parties can sue for violations of the Cartwright Act. The plaintiffs in Cartwright Act lawsuits are generally competitors who allege unfair competition, or consumers who allege that price fixing or restraints on trade have increased the prices they paid. Business and Professions Code § 16720 et seq.
10 The Unfair Competition Law of California prohibits false advertising and illegal business practices. The law describes "unfair competition" as any unlawful, unfair, or fraudulent business act or practice, or false, deceptive, or misleading advertising.

SIDDHANT GUPTA
Associate

TMT LAW PRACTICE
WHERE LAW MEETS INNOVATION

> ***"While Epic Games defined the relevant market as the iOS operating system, due to the unilateral control exhibited by Apple over its own system App Store, which are only usable on Apple devices. Apple proposed definition of the market included all video game platforms (mobile games, PC games, console games)."***

In response to this action brought by Epic Games, Apple filed a counter suit alleging that Epic Games has breached the ADA, which encompassed the terms of their engagement, and sought monetary damages to recover funds that Epic had made on the version of Fortnite with the 'hotfix' functionality.

RELEVANT MARKET

The determination of the 'relevant market' for competition is a vital aspect of every antitrust/competition law litigation, and so the definition was deliberated upon in this regard, basis the representations made by either party. While Epic Games defined the relevant market as the iOS operating system, due to the unilateral control exhibited by Apple over its own system App Store, which are only usable on Apple devices. Apple proposed definition of the market included all video game platforms (mobile games, PC games, console games).

Epic, in the alternative, further sought to move away from the linear definition of a videogame, and described Fortnite as a metaverse, which mimics the real world by providing virtual social possibilities, while simultaneously incorporating some gaming or simulation type of experiences for players to enjoy. While the court recognized the value of these observations by Epic Games, it chose to define Fortnite as a video game, due to the relevant infancy of the metaverse ideology, and corresponding references being made about Fortnite as a 'videogame'. It is also important to note that as users are more conversant with this terminology, so it could be presumed that the court favored the common parlance over the submissions made by the contesting party.

The court determined the relevant market as digital mobile gaming transactions, as the majority of non-gaming applications on the App Store are free to users, and developers are not required to pay any commissions to Apple for such applications. The court further declined to include PC and console gaming transactions within the ambit of the relevant market (despite Fortnite's availability on these platforms) due to the lack of substitutability between the two platforms, and testimonial evidence which depicted that mobile gaming transactions are not per se competitors for transactions on console systems.

Lastly, the court concluded that the geographic scope of the relevant market must be global - to the exclusion of China (wherein applications are not distributed likewise) - due to the global availability of these applications on the App Store.

Sherman Act – Section 1 – Rule of Reason Analysis

The rule of reason requires courts to conduct a fact-specific assessment of 'market power and market structure to assess the restraint's actual effect' on competition. The Court opined that the requirement of an "agreement" for its inclusion under Section 1 is not met, as the ADA is a unilateral contract offered to the developers for offering their games on the App Store, without any room for consensus ad idem, in relation to anti-competitive terms.

To demonstrate anti-competitive effects on the mobile gaming market, Epic Games was required to prove that the App Store distribution provisions increased the cost of mobile gaming transactions "above a competitive level", reduced the number of mobile gaming transactions, and stifled competition in the mobile gaming market.

While the court was of the opinion that the 30% commission charged stemmed from the market power enjoyed by Apple, rather than any competition in the open market, it chose to agree with Apple's procompetitive justifications[11] to charge such commission on the use of their App Store facilities. The court opined that Apple has a legitimate right to secure monetary benefits from the utilization of its intellectual property (App Store, which has been further refurbished over the years) and its "walled garden" approach to the iOS technology, is justified to provide a safe and trusted user experience on iOS, which encourages both users and developers to transact freely on its operating system.

While the court did find 30% commission rate to be excessive and unjustified on merits, the court believed Apple deserved a certain rate of commission for licensing its intellectual property and chose not to interfere with the rate set by Apple, basis the procompetitive justifications provided by Apple.

Sherman Act Section 1 - Tying

The court was of the view that the current scenario is not fit to be considered for a claim of "tying", as the IAP system and the operating system, iOS, cannot be treated as separate products, and IAP is but one component of the full suite of services offered by iOS and the App Store that is "integrated within the iOS devices".

Section 2 – Monopoly Maintenance

An action under Section 2 of the Sherman Act is based on the assumption that the defendant is a monopoly, who has the power to control prices or exclude competition. Since Epic Games was unable to prove that Apple exercised monopoly and the restrictions imposed by Apple are anticompetitive in nature, the claims made under these specific provisions were found to be unsustainable.

California Unfair Competition Law

The terms of California Unfair Competition law (UCL)[12] expects that a determination of violation of the unfair competition law is to be made on the basis of the court's weighing of "the utility of the defendant's conduct against the gravity of the harm to the alleged victim", and only where is indicated that the acts of the business qualify to be "immoral, unethical, oppressive, unscrupulous, or substantially injurious to consumers". The court has opined that Apple's actions to block developers from using push notifications and email outreach to users regarding lower prices on other platforms is detrimental towards the consumers, and such actions threaten a violation of antitrust law.

Apple's Counterclaims

While Apple alleged that Epic Games has violated the ADA that was signed prior to the onboarding of Fortnite (and other separate games, applications), Epic Games claimed that the ADA was illegal and unenforceable, on the basis that the ADA is violative of the Sherman Act, the Cartwright Act and the UCL. The court had already found that the ADA did not violate any antitrust provision and is solely violative of the anti-steering provisions under the UCL. Furthermore, the court did not agree with the argument that the ADA was against public policy, and consequently decided that Apple is entitled to monetary relief from Epic Games due to the violation of the ADA signed between the parties.

[11] A procompetitive rationale is a "non-pretextual claim that defendant's conduct is indeed a form of competition on the merits because it involves, for example, greater efficiency or enhanced consumer appeal."

[12] Business and Professions Code §§ 17200 et seq.

ORDER

The court therefore issued a nationwide injunction permanently restraining Apple from prohibiting developers from: (i) including in their apps and their metadata buttons any external links, or other calls to action that direct customers to purchasing mechanisms, in addition to In-App Purchasing; and, (ii) communicating with customers through points of contact obtained voluntarily from customers through account registration within the app.[13]

RAMIFICATIONS ON GAMING INDUSTRY

The court's order pertinently does not enable developers to integrate third party payment providers to the payment processing system within their applications. The order, however, can now enable developers to place hyperlinks/ metadata buttons to their payment processing systems on the application, which can process outside the ecosystem of the application, thereby sidestepping the requirement to deposit a 30% commission on the payment via the IAP system.

Developers could potentially rake in a larger portion of revenue, through the commercialization of their intellectual property (without the requirement for the IAP commission deposit), thereby ensuring better funding for the R&D and reducing advertising costs for these applications. However, it is pertinent to remember that the court had justified Apple's entitlement to a commission for the usage of its intellectual property (while noting that 30% is not a product of prevailing market standards). Therefore, while Apple may fail to collect a commission through the IAP system, they may still be entitled to audit the revenues accrued by these developers, to collect their rightful commission.

Epic Games has already filed an appeal against the order of the trial court and will be presenting the formal grounds of their appeal in the following months. It is likely that any appellate litigation may focus heavily on the reduction of the commission rate, rather than the removal of any commission rate altogether. The definition of a videogame may prove to be of paramount importance to determine the relevant market in any subsequent litigation, as Epic Games has been consistently seeking to define Fortnite as a metaverse experience, instead of a videogame.

Organizations may further seek for integration of the developer payment processing system into the ecosystem of the iOS application itself, to ensure that the developer does not lose out on revenue at the cost of user experience, if they have to open up a separate browser, enter their credit card information and make the ensuing payment.

CONCLUSION

Recently, Apple has also filed a notice of appeal to the judge's order and asked for a stay on the injunction granted by the Court. Further, any future arguments may heavily focus on the definition of a metaverse, which has turned into a rich topic of debate and concern lately, after Facebook's advertised entry into the domain.

[13] Permanent Injunction, Epic Games, Inc. v. Apple Inc., Case No. 4:20-cv-05640-YGR (N.D. Cal.Sept. 10, 2021).

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Outside of law, Siddhant is an avid fan of sports having represented his college's football team in outstation fests.

DATA PROTECTION LAW AT THE DUBAI INTERNATIONAL FINANCIAL CENTRE AND GENERAL DATA PROTECTION REGULATION IN THE EU (GDPR)

A COMPARATIVE APPROACH

This article compares the DIFC DP Law to the European GDPR, it aims to discuss the material differences between the two data protection laws and in turn elucidate on the strengths and drawbacks of the DIFP DP Law

The United Arab Emirates (UAE) has in recent years become a prevalent business hub, appealing to the commercial sector through its various economic zones known as free zones. Each free zone in the UAE has its own applicable rules and regulations, the Dubai International Financial Centre (DIFC) being one such free zone that follows an English common law framework. In July 2020, the DIFC enacted a new data protection law, namely, the Data Protection Law No.5 of 2020, "DIFC DP Law" here on, repealing the previous DIFC DP Law No.1 of 2007.

The DIFC DP Law is widely considered a progressive and welcome development in the Middle East as it incorporates elements from best practices such as the General Data Protection Regulations ("GDPR") and the California Consumer Privacy Act ("CCPA"). This article compares the DIFC DP Law to the European GDPR, it aims to discuss the material differences between the two data protection laws and in turn elucidate on the strengths and drawbacks of the DIFP DP Law. It is important to note that although this article aims to examine the differences of each respective data protection law, the discussion is non-exhaustive.

DEFINITIONS AND BACKGROUND

The enactment of well-drafted data protection laws and regulations is an important step in the development of the rights and freedoms of individuals who provide data to companies and make use of services that process any such data. To put simply, data protection laws address and place obligations on "Controllers" and "Processors" to safeguard the rights and information provided by "Data Subjects". The following list of definitions are those pertaining to the DIFC DP Law found in Schedule 1 (3), which however, remain similar to the definitions incorporated in the GDPR.

1. Controller – any person who alone or jointly with others determines the purposes and means of the Processing of Personal Data.

2. Processor – any person who Processes Personal Data on behalf of a Controller.

3. Data Subject – the identified or Identifiable Natural Person to whom Personal Data relates.

4. Processing – any operation or set of operations performed upon Personal Data, whether or not by automated means, such as collection, recording, organization, structuring, storage

5. & archiving, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination, transfer or otherwise making available, alignment or combination, restricting (meaning the marking of stored Personal Data with the aim of limiting Processing of it

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in the future), erasure or destruction

LAWFULNESS OF PROCESSING

To begin with, there exist legal grounds for processing data that are applicable to controllers and processors. Personal data cannot be processed unless such activity falls into the regulatory standards. The grounds for processing data are similar for both DIFC DP Law and GDPR. The legal bases for processing data are found in Article 10 of the DIFC DP Law and include the following:

1. Consent – where the data subject has given consent.
2. Contract – where the processing of data is necessary to perform the contract to which a data subject is a party.
3. Compliance with the Law – where the controller must process the data out of legal obligation.
4. Protection of Interest – where processing is necessary to protect the vital interests of the data subject.
5. Performance of a task – where it is necessary to process data for a company to be able to perform a task in public interest or to carry out its official functions.
6. Legitimate Interests – Where the processing is necessary for legitimate interests such as carrying out administrative work.

The lawfulness of data processing largely remain the same for both the GDPR as well as the DIFC DP Law. The DIFC DP Law, however, enacts additional provisions and takes a more demanding stance for the grounds of consent under Article 12 (6) and (7). Under the DIFC DP Law, taking the informed consent of a data subject once is not sufficient as this should be on going and continuous.

CONSENT

When it comes to obtaining consent from the data subjects, the two laws agree that consent is of prime importance and it should be obtained freely with a clear affirmative act. The DIFC DP Law under Article 12 (7) additionally requires controllers to re-affirm consent where the processing is on-going and more than just a "single discrete incident". The data subject in this case must be contacted without undue delay and must be asked to re-affirm the consent. This should also be done where the data subject would no longer reasonably expect for the processing to be continuing.

A simple test as to whether a controller is in breach of GDPR or DIFC DP Law would be as follows:

You visit an e-commerce website that asks you for your personal information such as name, address, bank account details, however, before you can proceed to shop or pay, the website presents you with a pop-up that includes two boxes which are ticked by default. You must "un-click" the boxes yourself if you do not consent for your data to be processed and for your data to be used in profiling. If you inadvertently proceed to click "ok" or "accept" and do not untick the boxes, there has been a data breach on the part of the controller. You have not given your consent voluntarily as this was done by default. Data subjects making

use of websites must always heed caution to the way in which their consent is obtained.

Controllers that use WhatsApp may involuntarily be in breach of data protection laws. As data subjects, upon downloading WhatsApp and creating an account, we are presented with a set of data processing terms and conditions, WhatsApp then proceeds to request our consent to which we click accept. Rarely, do data subjects ponder over what happens when companies, who are also controllers themselves, use WhatsApp as a medium to connect with clients or other colleagues, sharing personal and confidential data. Merely relying on consent given to WhatsApp is not sufficient. Controllers must either ask the client to read the terms and conditions of WhatsApp or ask their client's explicit and unequivocal consent.

A disclaimer is made on the WhatsApp website about third parties that states the following:

"Information Others Provide About You. We receive information about you from other users... We require each of these users to have lawful rights to collect, use, and share your information before providing any information to us."

As such it is the duty of a controller to inform and obtain the consent of the data subject. Law-abiding controllers will usually inform the client at the outset that WhatsApp will be used a medium to communicate and proceed to obtain the client's consent before any communication or data sharing.

An important element of the DIFC DP Law is re-affirmation of consent. In a situation where the data subject is no longer a client and as such would no longer reasonably be expected for their data to be processed, the controller must communicate the processing to the data subject and request for their consent again.

APPOINTMENT OF DATA PROTECTION OFFICER (DPO)

The DIFC DP Law and the GDPR both contain provisions for the appointment of Data Protection Officers (DPO) tasked with ensuring controllers and processors are in compliance with the data protection laws. The circumstances where DPO's should be appointed by controllers are largely the same under both the DIFC DP Law and GDPR. Under Article 16 of the DP Law, a controller will be required to appoint a DPO where they are processing High Risk Activities. High Risk Activities under Schedule 1 (3) of the DP Law include the processing of large amounts of personal data including sensitive data at high risk to the data subject. High Risk Processing Activities will also include the processing of personal data where it is systematic and where there is an extensive evaluation of data which includes profiling. As per the GDPR, the appointment of a DPO applies to all controllers or processors processing large scale and systematic monitoring of individuals and where the processing of personal data includes sensitive information or information relating to criminal convictions and offenses on a large scale. The two provisions are similar, however, the DIFC DP Law also requires the appointment of a DPO where the processing will include the adoption

"Rarely, do data subjects ponder over what happens when companies, who are also controllers themselves, use WhatsApp as a medium to connect with clients or other colleagues, sharing personal and confidential data."

of new or different technologies which will increase the risk to the safety of personal data as this is also considered a High Risk Activity.

Another important provision of DIFC DP Law that is Article 16(4), which states that controllers who are not processing High Risk Activities per se and who are not required to appoint a DPO must still designate an individual to oversee compliance with the law and be readily available to report to the Commissioner. This is an additional aspect of the DIFC DP Law in comparison to the GDPR, it ensures that there remains a designated individual at all times regardless of the fact that the controller is not carrying out High Risk Processing Activities. The designated individual not only oversees the controller's compliance but may at times also be required to report to the commissioner. This provision is welcome and innovative as it prioritizes the safety of personal data regardless of its quantity and sensitivity and adds additional protective barriers to prevent breaches.

DATA PROTECTION IMPACT ASSESSMENT

Data Protection Impact Assessments (DPIA) are an integral part of Data Protection which involves undertaking an assessment of the impact of the processing of personal data and the risks to the data subjects. Under Article 35 (3) of the GDPR, there is an express requirement of circumstances that would require the undertaking of DPIA as opposed to Article 20 of the DIFC DP Law, where although reference is made to the undertaking of a DPIA (when the controller carries out High Processing Activities), there exist no express conditions where there is an obligation. To go further Article 35 (4), the GDPR states that the supervisory authority shall create a list, accessible to the public, of processing activities that would require the carrying out of a DPIA. This can be contrasted with Article 20 (4) of the DIFC DP Law that states "the Commissioner may at his discretion publish a non-exhaustive list of types or categories of Processing operations that are considered to be High Risk Processing Activities". This demonstrates that the provision of a list is not an obligation for the commissioner, removing the element of discretion in the clause would render it an obligation which in turn would mean more clarity for controllers and processors and therefore more of a chance that controllers would carry out the necessary DPIA in accordance with the law to ensure a more secure form of data protection for data subjects.

Although the DIFC DP Law does not incorporate an express requirement for a DPIA, there exists a pertinent supplementary provision not found in the GDPR. Article 19 of DIFC DP Law states that where the controller is obliged to appoint a DPO, the DPO shall carry out an assessment of the controller's processing activities, once a year, which is also known as the "Annual Assessment". This annual assessment shall then be submitted to the commissioner for review.

DATA SUBJECTS RIGHTS – RIGHT NOT TO BE DISCRIMINATED AGAINST

The DIFC DP Law as well as the GDPR both contain comprehensive Articles ensuring the rights and freedoms of data subjects. Both data protection laws focus on anti-discrimination against protected characteristics of data subjects such as race, gender, disability. Both the DIFC DP Law and the GDPR enact provisions giving data subjects rights to their data such as right to withdraw consent, right to access, rectification and erasure of personal data.

The DIFC DP Law enhances the rights of data subjects further by inserting a provision into the law prohibiting controllers from discriminating against data subjects exercising their rights within the DP Law. Article 39 of DIFC DP Law reads as follows:

1. A Controller may not discriminate against a Data Subject who exercises any rights under this Part 6, including by:

   (a) denying any goods or services to the Data Subject;
   (b) charging different prices or rates for goods or services, including through the use of discounts or other benefits or imposing penalties;
   (c) providing a less favorable level or quality of goods or services to the Data Subject; or
   (d) suggesting that the Data Subject will receive a less favorable price or rate for goods or services or a less favorable level or quality of goods or services.

Where the data subject refuses for their data to be processed, a controller in the DIFC cannot deny them their services based solely on this decision as this would be discriminatory. This provision goes further than the GDPR and follows the California Consumer Privacy Act (CCPA) in incorporating the provision and as such creates a more secure form of protection by using a blend of provisions from both the CCPA and the GDPR.

DATA BREACHES

The DIFC DP Law takes a different approach to notification of personal data breaches than those in the GDPR and the CCPA. Article 41 of the DIFC Law states "if there is a Personal Data Breach that compromises a Data Subject's confidentiality, security or privacy, the Controller involved shall, as soon as practicable in the circumstances, notify the Personal Data Breach to the Commissioner."

This provision raises two important issues, firstly that the personal data breach must be such that it compromises a data subjects' confidentiality, security or privacy. Secondly, that the notification must be done as soon as practicable in the circumstances. "As soon as practicable" leaves room for ambiguity and as such does not give the controller a strict timeframe during which he must comply in alerting the commissioner of such data breach. The second issue with

the provision entails that the only time the commissioner should be notified of any data breach is when it compromises the security of the data subjects.

The wording used in this provision is not seen in the GDPR or the CCPA which state that any breach should be communicated to the supervisory authority. For instance, Article 33 (1) of the GDPR states that "In the case of a personal data breach, the controller shall without undue delay and, where feasible, not later than 72 hours after having become aware of it, notify the personal data breach to the supervisory authority competent in accordance with Article 55, unless the personal data breach is unlikely to result in a risk to the rights and freedoms of natural persons".

This provision demonstrates exigency and importance in reporting the data breach to the relevant authority and adds a timeframe.

FINES AND PENALTIES

Schedule 2 of the DIFC DP Law entails a list of fines and penalties applicable to data controllers and processors. The fines range from USD 10,000 to a maximum of USD 100,000. This is a different approach to that taken by the GDPR, which groups fines under two categories, less severe infringements and more serious infringements. Under Articles 82 and 83 of the GDPR, the less severe infringements could result in a fine of up to EUR 10,000,000 in contrast with more serious infringements which could lead to fines of up to EUR 20,000,000. The variance in figures is paramount as it instills a sense of importance to data subjects and their rights and freedoms, the ramifications of such breaches have a great impact on the caution exercised by controllers in processing personal data. Although the DIFC DP Law has taken the lead with its data protection provisions in the region, it is expected that amounts payable in fines are to become more stringent over the years.

THE DIFC DP LAW AS IT STANDS

The DIFC DP Law is an important development in Data Protection Law, particularly for the Middle East, the inspiration it draws from the CCPA and GDPR in some ways renders this piece of legislation more progressive than its counterpart. The added provisions against discrimination, the undertaking of annual assessments, the provisions that require designated individuals where DPO's need not be appointed contribute to its modernity and demonstrate its commitment to the rights and liberties of its data subjects.

We deem the impact of the DIFC Data Protection Law as generational in the Middle East region. The region is massively investing in technology, reg-tech and artificial intelligence; therefore such regulation is paramount to the success of the regulatory landscape and of the data security overall. Following the example of its predecessor (e.g the GDPR), the DIFC Data Protection Law has set grounds for new enactments. Recently, the Kingdom of Saudi Arabia has issued data protection legislation, a field on which we would be happy to discuss on a different occasion.

ABOUT THE AUTHOR

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Dr. Laura Voda is part of the corporate and commercial practice group at the Dubai office of the firm. She has over 10 years' experience in the region and has advised clients on a wide range of corporate and commercial matters including international transactions, cross-borders M&A, regulatory and compliance, ventures, business expansions and real estate. She also holds a notable experience in arbitration, both domestic and international, having represented clients in comprehensive commercial and real estate claims. She is building an expertise in ESG related work and modern slavery law obligations, assists with the pro bono practice and engages in commercial litigation.

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Ani Tankryan holds a bachelor's and a master's degree in law. She undertook the Bar Professional Training Course in 2019 and was subsequently called to the Bar of England and Wales in February 2021. As part of her master's program, she volunteered at the Pro-Bono Legal Clinic of the University of Law in Birmingham dealing with Family Law cases. Ani is a corporate and commercial paralegal at Fichte & Co. where she is further expanding her skills in legal research, article writing and assisting with advising clients. She takes a keen interest in pursuing a career in Commercial and Data Protection Law.

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8th October 2021 marked yet another critical occasion in the fast-evolving Indian Legal Industry and its dynamically changing practice area of cross-border insolvency. Legal Era-Legal Media Group's 6th Annual Insolvency Summit 2021, renowned for transforming the narratives in the legal industry was virtual and live.

Eminent global experts from Asia, elite business lawyers, and global thought leaders came together to analyze and dissect the Insolvency and Bankruptcy Code and its impact to understand the mindset and hurdles faced by operational creditors, promoters, and the response to the structural change.

With global speakers, 3 Key Eminent Keynote Speakers, 6 panel discussions, and 370 delegates highlighting the impact, trends, and future of the IBC implemented in 2016, this invite-only Summit kept the attendees engaged across geographies and domains, not limited to practitioners in the insolvency practice area.

The theme of the Summit was 'New normal era - trends, challenges, opportunities & future in Asia'. The excellent and pertinent range of subjects of discussion included cross-border insolvency and enforcements, litigation funding in IB disputes and navigating distressed investing in the pandemic era, insolvency practices in the new normal era, and way forward for stressed assets resolution in India.

Nothing could have been more interesting than to leverage the changing tides of time as the power of the high-level

discussions were especially focused on New Normal Era - Trends, Challenges, Opportunities & Future in Asia.

Eminent global experts like Amarjit Singh Chandhiok, President-Elect, Bar Association of India, Dr. T. K. Viswanathan, Chairman Bankruptcy Law Reforms Committee, and Justice A.K. Sikri, Former Judge, Supreme Court of India discussed key subjects. That included cross-border insolvency, litigation funding, navigating distressed investing, rescue financing, and the challenges and opportunities that lay ahead in Asia.

Is the recovery rate likely to slip further as the IBC regime reopens after a yearlong hiatus? Will there be a new code for creditors, and if so, what influenced it? And most importantly, what will change, and how will we navigate this new normal? The who's who of the world of law and business joined the Summit to know the answers to these questions. And they sure enjoyed the enthralling conversations as the eminent panelists and speakers dove into the several potential issues like our slowing economy, uncertain prospects, and reduced buyer interests that determine the way forward.

Sure enough, the day-long Summit had proven to be successful like all other events organized by the Legal Era. Even as the crisply conducted sessions progressed, the attendees made full use of the gold standard opportunity to know, explore, and got introduced as they interacted with judges, partners, GCs, external and in-house lawyers, and many more decision-makers in the legal industry.

AMARJIT SINGH

The Summit began with an invigorating Opening Address by a stellar panel of Amarjit Singh Chandhiok, President-Elect, Bar Association of India, Dr. T. K. Viswanathan, Chairman Bankruptcy Law Reforms Committee, Justice A.K. Sikri, Former Judge, Supreme Court of India.

All the three distinguished guests captured the IBC Code's evolution, achievements over the last 5-year short period, challenges that lie ahead, and the journey of insolvency law in the light of the recent "India Parliamentary Committee Report: Issues, Recommendations & Implementation."

Amarjit Singh Chandhiok, the founder and President of the 25-year-old organization Insol India, shared the journey of the IBC Code optimistically and holistically. He opined,

"COVID brought so many new changes for us. But from the perspective of the resolution professional to the Supreme Court, each one of us has played a role to make sure IBC does not meet the same fate as SICA or Debt Recovery legislations. Rather, we are seeing new trends. I congratulate everyone who participated in the evolution of IBC. We have had 5 years of IBBI report. We have now started looking at insolvency at the LLP level. People had expressed apprehension that there was no profession as being a resolution professional – but we have seen people have risen to the occasion – lawyers, CAs, CS."

He made a vehement appeal that IBC was not a recovery process. We shouldn't see what the percentage of the recovery is. Rather, his vision was "I'm looking at a day where the COC or resolution professional will say – We will look at pre-package and see how we restructure them at our level even before we come into the level of CIRP process. Approve a plan where we're able to restructure the industry in a way that it's utilized for public purpose."

Looking ahead, Mr. Chandhiok made a couple of suggestions to build and strengthen the IBC's robust implementation and evolution.

1. **We have to think about what kind of support we are giving to the Supreme Court** so as to enable it to make the right decisions on insolvency law and interpretation of the IBC Code.
2. **Everything is interwoven.** We cannot have one legislation to look at for insolvency. We need to combine it with mediation too.
3. **The time has come to look at cross-border differently.** We all professionals have to give ideas to see how we can manage cross-border considerations more so as a part of the economic condition of the country. It's an opportunity.
4. **We have to test IBC concerning personal insolvency also.** At the moment the DRT was overwhelmed with work. So district judges were probably better to confer jurisdiction.

Mr. Chandhiok noted that Legal Era had collected voluminous information to help the insolvency regime's evolution. And with this Summit, he said, "We will be able to carve out the challenges and bring out solutions and see the best we can do by suggesting the perspectives and recommendations arising from this Summit to IBBI and Legislature.

Mr. Chandhiok concluded by highlighting that an annual moot court dedicated to the IBC in NLU Delhi got 41 entries last year even at the peak of the pandemic. This year, the entries will be even more. That was a telling sign for the future of India's insolvency and bankruptcy practice. The opportunities will only increase.

IBC's five years journey has paved way from a robust Insolvency and Bankruptcy regime. Extension of prepack resolutions to one and all coupled with Cross-border provisions are the need of the present era.

Dr. T. K. Viswanathan, the person who laid down the foundation of the IBC Code passionately shared how the IBC Code was not just important legislation but also a distinct one.

"The IBC is a jewel in the Indian statute book and historical reform legislation. The Code infused a new wave of legal reform using data analytics, AI, market indicators and keeps the law in sync with socio-eco realities. It has a sharp focus on the relationship between law and economics. The Code is a piece of eco legislation and a result of the government's response to challenges faced by the country in a fast-changing global economy. The code represents the current market realities and is supplemented by a rich ecosystem that other acts of parliaments lack."

Dr. Viswanathan highlighted how the IBC Code was robust, visionary, and extremely effective legislation.

1. **The IBC Board is futuristic in design and can accommodate the need for a digital environment and digital documentation.** Tele-linked environment cutting across jurisdictions and courts is welcomed. The pandemic has forced everyone to accept virtual court hearings.
2. **While cross-border insolvency matter was not provided for in the code draft, that will require bankruptcy judges on a joint hearing.** UNCITRAL Model Law provides mechanisms for cross-border insolvency concurrent proceedings/joint hearings between two courts. The DRT Act also provides for online mediation.
   These two developments will push IBC proceedings to virtual mode.
3. **Datafication of information and not just digitization of information i.e. to put information in a quantified format.** And to capture such quantifiable info – we need to know what to measure and how to measure. For that, the government is setting up a central registry. The government will also have to create a Public Credit Records Authority for efficient credit decision-making.
4. **In law itself, we are looking at leveraging big data -** statistical, new techniques, and algorithms to search for patterns in data and create a wealth of useful information to fortify legal arguments.

Dr. Viswanathan acknowledged that there had been criticism of the IBC Code but the real concern was the 2021 report on IBC by the standing committee of finance. Its recommendations included that the IBC Code needed to be revisited in light of its original purpose and objectives. As against that, Dr. Viswanathan put forth three arguments:

1. The IBC is an act of parliament. It cannot be modified to solve teething difficulties such as in case of stray instances of the Court's digression. We are in the middle of the transition and tension between the old legal order and the new legal order.
2. Legacy cases before the enactment of the code were overwhelming. Once the backlog is cleared, the credit market will improve.
3. No other Act contains so much data that enables the assessment of the effectiveness of legislation. The IBC readily provides these standards. So any appraisal of the Code should be seen in that light.
4. The IBC was not recovery legislation. Judging the IBC's effectiveness based on the number of cases resolved was not the correct benchmark.

DR. T. K. VISWANATHAN

The Insolvency and Bankruptcy Code 2016 is futuristic in design and can accommodate fast changing technological innovations and challenges the lawyers to change their approach to law itself by looking into Big Data and Data Analytics rather than focusing on the bare bones of black letter law.

Agreeing with Mr. Chandhiok, Dr. Viswanathan concluded, "As the Code continues to be in force, the ecosystem will play a role in helping the transition from the pre-IBC legal order to the ongoing post-IBC legal order. Everyone is positively working towards it. An entire community of resolution professionals has emerged. Our NCLTs and NCLATs are delivering beyond their means and they need our support."

JUSTICE A. K. SIKRI

Justice A.K. Sikri, a globally acclaimed arbitrator and also famously called by the legal fraternity "a resolution judge," shared great spirit and camaraderie with Mr. Chandhiok and Mr. Viswanathan on the evolution and vision of the IBC. He began with applauding Legal Era for being associated with Insolvency law right from when the Code came into effect. Justice Sikri especially noted that as well as these occasions for sharing views and coming up with solutions, "Legal Era has been preparing statements and reports on the IBC and deliberating on it every year. This is commendable." Agreeing with Mr. Chandhiok and Mr. Viswanathan, Justice Sikri highlighted that IBC steals the limelight among all legislations because, "The IBC not only connects law with the economics, it is also connected with the economic progress of the nation."

He opined, "In the era of globalization and liberalization, we talk of India becoming a $ 5 trillion economy in next few years and attracting FDI... this cannot be achieved with efforts at the government level alone. We need laws that give impetus to such growth. UNCITRAL is coming up with model laws. All the primary objectives that UNCITRAL stated were kept in mind while drafting the IBC. That far-sightedness was there. We didn't have any comprehensive law on that before the Code finally fructified after a long movement for insolvency regime."

Justice Sikri explained that the main purpose of IBC was not to act as a recovery agent, just as Mr. Chandhiok and Mr. Viswanathan highlighted. **"The main aim was to ensure that when any cause is brought to NCLT, the first attempt is resolution process to save that institution or corporate - and if that fails, then we talk of insolvency and value maximization."** Even as IBC was not machinery for recovery, Justice Sikri was wise to point out that recovery remains one of the aspects in case rehabilitation fails. And on that note, he shared some inspiring data points.

"Economic Survey 2020 reported that we had a 42.5% recovery rate. In the Essar Steel case, the court paved the way for the receiver to get 92% of the total debt.

The country's Insolvency Ranking had improved from 136 to 52 in 2020. The Resolution process time has reduced from 4.3 years to 1.3 years in 2020.

It was a debtor regime earlier and now creditor is in control."

On the issue of criticism against the Code, Justice Sikri was optimistic about the strides we had made in the last 5 years of the Code's implementation. The stakeholders have owned up and stepped forward and the market has responded and supported.

"All stakeholders including lawyers appearing, judges manning the NCLT right up to the Supreme Court, creditors, IP resolution professionals, the IBBI and Dr. Sahu's phenomenal work - all have worked with zeal and commitment. Keeping in mind the timelines, the Supreme Court has taken a lead not only in removing the cobwebs in interpretation and advancing the IBC law, by many celebrated judgments but all that has been done in a timebound frame.

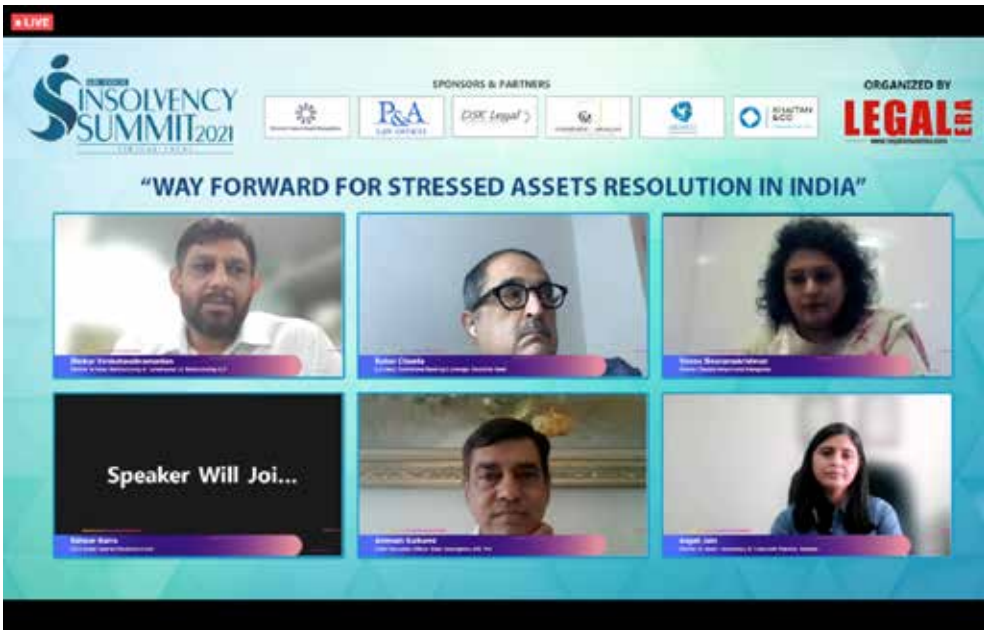
We were even recognized globally for bringing insolvency reforms, and if we brought cross-border insolvency into the Code, we would bag the international recognition again."

Going forward, Justice Sikri highlighted a couple of challenges and shared his recommendations.

Experience had shown that the struggle will always be there between

creditors' rights and rehabilitation. Two opposing questions - Why should promoters be in control during rehabilitation when they have brought the company to the condition of insolvency? Should the running of the company be given to a person who has no idea how to run the business during the interregnum? From debtor to a creditor in control - there has to be a balance. And that is the challenge for NCLAT – what kind of resolution they bring about. The resolution plan should not just be what's best for the corporation, but what's also best in the interest of the nation. The other challenges Justice Sikri highlighted were high haircuts, never-ending litigation and time delays, empty benches in the NCLT and the NCLAT making it impossible to meet the timelines laid out in the IBC, MSMEs getting the impression that they were losing out even as they are the backbone of the economy accounting for 28% of the GDP, the void of cross-border insolvency, and the additional challenges due to COVID.

Justice Sikri concluded his address by reinforcing that IBC implementation needed all strategies to come together – leveraging big data, use of AI, online dispute resolution, coupled with mediation. Neither could work in silos. He recommended Richard Susskind's works – "Future of Law" and "Online court and future of justice" like two great books to understand what kind of automation to use.



All three distinguished guests congratulated Legal Era for constantly creating occasions such as this Insolvency Summit to capture new legal trends such as now, in the new normal era, and developments in the area of insolvency.

Next came the most-awaited, first-panel session of the day. The focus was on 'Cross-border insolvency.' Moderated by Nirav Shah, Partner, DSK Legal, the panelists were Peter Bowden, Partner, Gilbert + Tobin, Rishi Hindocha, Counsel, Allen & Overy LLP, Joanne Collett, Partner, Walkers, and R S Sachdeva, President (Group - Legal), JK Organization. They shared thoughts and learnings on hot topics of today.

IBC has been a game changer for the lender community in India. It has changed the behavior of defaulting companies and promoters. There is one area which still needs to be plugged to ensure the lenders are able to recovery their dues to the full permissible extent. And that is incorporation of cross-border insolvency provisions in the IBC. This will help all lenders get access to assets / money parked overseas by companies and its promoters said Nirav Shah, Partner, DSK Legal.

Right after this mature and rich discussion that left attendees with umpteen food for thought, the attendees braced themselves for the meaty panel discussion on 'Way forward for stressed assets resolution in India.'

Dinkar Venkatasubramanian, Partner & Head Restructuring & Turnaround, EY Restructuring LLP moderated the session adeptly.

The panelists included Rahul Chawla, Co-Head, Investment Banking Coverage, Deutsche Bank, Veena Sivaramakrishnan, Partner, Shardul Amarchand Mangaldas, Eshwar Karra, CEO, Kotak Special Situations Fund, Avinash Kulkarni, Chief Executive Officer, India Resurgence ARC Pvt, and Anjali Jain, Partner & Head – Insolvency & Corporate Practice, Areness.

The panelists captured their views on relevant angles such as the Evolution of corporate stress resolution over the last 5 years, strengthening the IBC Framework in light of the Parliamentary Committee report, Alternatives to IBC for Stress Resolution, and Role of Distressed Investors.

Dinkar Venkatasubramanian,

Executive Vice, Partner & Head Restructuring & Turnaround, Ey Restructuring LLP said "Our context is unique. We had a build-up of NPAs in 2017 imposing a logjam on economic growth. IBC, since it was enacted, has been fantastic in driving these NPAs down to ~7.5% by 2021.

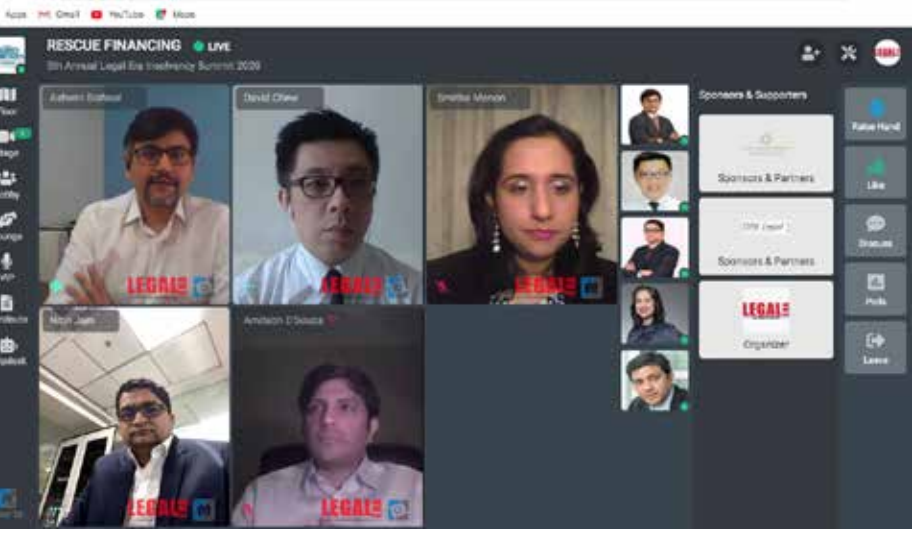
However, the pandemic stress and the sheer volumes of cases needs a multi-pronged approach to stress resolution going forward - involving a change in mindset of lenders, an effective pre-insolvency resolution mechanism, a stronger IBC and an unencumbered flow of private capital."

"Pre-litigation mediation in IBC legal proceedings is the immediate solution to reduce the workload burden on the insolvency judicial infrastructure." quoted Anjali Jain, Partner, Areness.

That led the way for the attendees to absorb the subject: 'Cross-border enforcements: defaults & asset tracings.' Ian De Witt, Partner, Tanner De Witt Moderated the discussion with panellists Michael Redman, Managing Director, Burford Capital, and Arush Khanna, Co-founder & Partner, Numen Law Offices & Vijayendra Pratap Singh, Partner, Head Litigation, AZB & Partners.

The Insolvency and Bankruptcy Code is an evolving jurisprudence. I think the time has come to seriously consider the recommendations of the Insolvency Law Committee and suitably adopt the UNCITRAL Model Law on Cross-border insolvency. This will go a long way in reducing delays and uncertainties for creditors who have security interests in assets of corporate debtors situated outside India - said Arush Khanna, Partner, Numen Law Offices

While insightful discussions sparked some interesting conversations, all through, the attendee's social media handles also kept buzzing as they shared images and sound-bites of an impressively organized and conducted Virtual Summit.



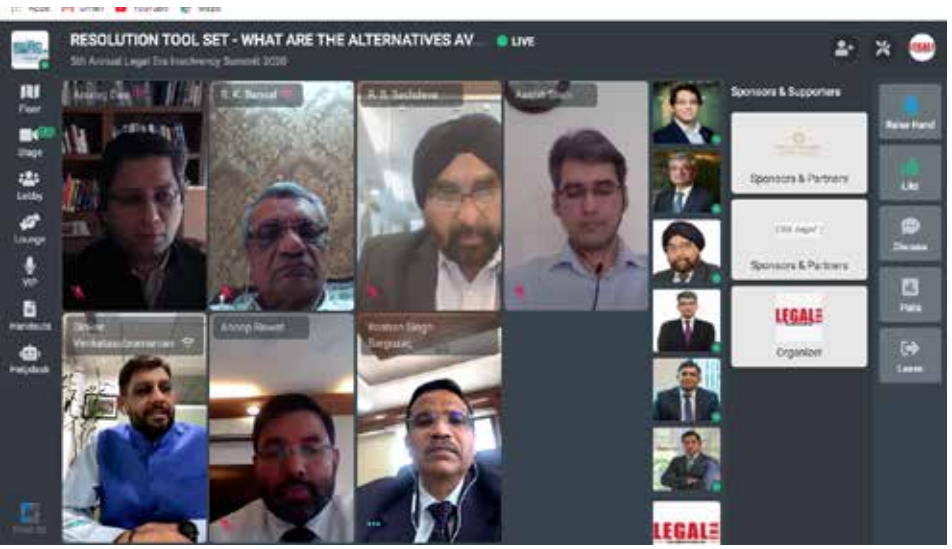
'Navigating distressed investing in the pandemic era' was the subject of the fourth-panel discussion of the day moderated by Ajay Shaw, Partner, DSK Legal.

The panelists were Aswini Sahoo, Executive Vice President & Chief Investment Officer, Asset Reconstruction Company (India) Limited, Shailen Shah, Partner, BSRR & Co., Ashutosh Maheshwari, Founder & CEO, IMAP, and Sumesh Dhawan, Managing Partner & Founder, Dhawan & Co.

IBC is a path breaking economic legislation; initiatives to make the Code less prescriptive with a focused commercial outlook and limited judicial interventions can take it a long way. Pre-packaged insolvency is one such great step towards time bound rehabilitation of Indian distressed businesses - said Shailen Shah, Partner, BSRR & Co.

The Summit propelled ahead with an exciting session on 'Rescue Financing'. The panelists were David Chew, Partner & Founder, DHC Capital, Jyoti A Singh, Founder, AJA Legal and Associates; Pooja Mahajan, Managing Partner, Chandhiok & Mahajan, Advocates & Solicitors; Kumar Saurabh Singh, Partner, Khaitan & Co . This session was moderated by Nitin Jain, Partner - Restructuring & Turnaround, EY India

A vibrant and effective rescue finance market is necessary for ensuring effective resolutions and minimum destruction in value of stress companies. Banks need to be more pragmatic in considering allowing of sharing of security and ceding priority charge on cash to allow new lender to provide rescue capital in stress situations quoted Nitin Jain, Partner, EY India



The panels made way for another exciting session on 'Litigation funding in IB disputes' moderated by Anoop Rawat, Partner, Shardul Amarchand Mangaldas with panelists Piyush Prasad, Counsel (Foreign Law), Wong Partnership, and Annat Jain, Managing Director, Payard Investments Pvt Ltd and Arvindran Manoosegaran, Investment Manager, Omni Bridgeway sharing their perspectives.

The session on litigation funding was well curated and timely in view of the pandemic and the hurdles it has created for businesses in obtaining funding. I thoroughly enjoyed interacting with my Panelists.

Litigation recoveries have a huge potential in the Indian IBC context. This can be developed as an excellent asset class which would improve the recovery ratio for the creditors. Right processes need to be built around this asset class in order to give predictability to both creditors of the corporate debtor and the investors who fund this asset class. quoted Anoop Rawat, Partner, Shardul Amarchand Mangaldas

Piyush Prasad, Counsel (Foreign Law), Wong Partnership quoted IBC is a path breaking economic legislation; initiatives to make the Code less prescriptive with a focused commercial outlook and limited judicial interventions can take it a long way. Pre-packaged insolvency is one such great step towards time bound rehabilitation of Indian distressed businesses

As this final Panel Discussion unfolded, the attendees knew that they had enjoyed 2021's enriching day of power-packed sessions extremely relevant in today's increasingly tech-savvy and inter-dependent marketplace.

Backed by sponsors and partners such as P&A Law Offices, DSK Legal, Society of Indian Law Firms (SILF), Areness Attorneys, Chandhiok & Mahajan, Advocates and Solicitors, and Shardul Amarchand Mangaldas, the one-day Summit was yet another milestone in suggesting a credible way forward for the Legal Industry in India and outside.

Here's to always staying ahead of the curve and enabling critical opportunities to present views, raise tough questions, share key learnings and experiences – with absolute class, practical knowledge, and finesse.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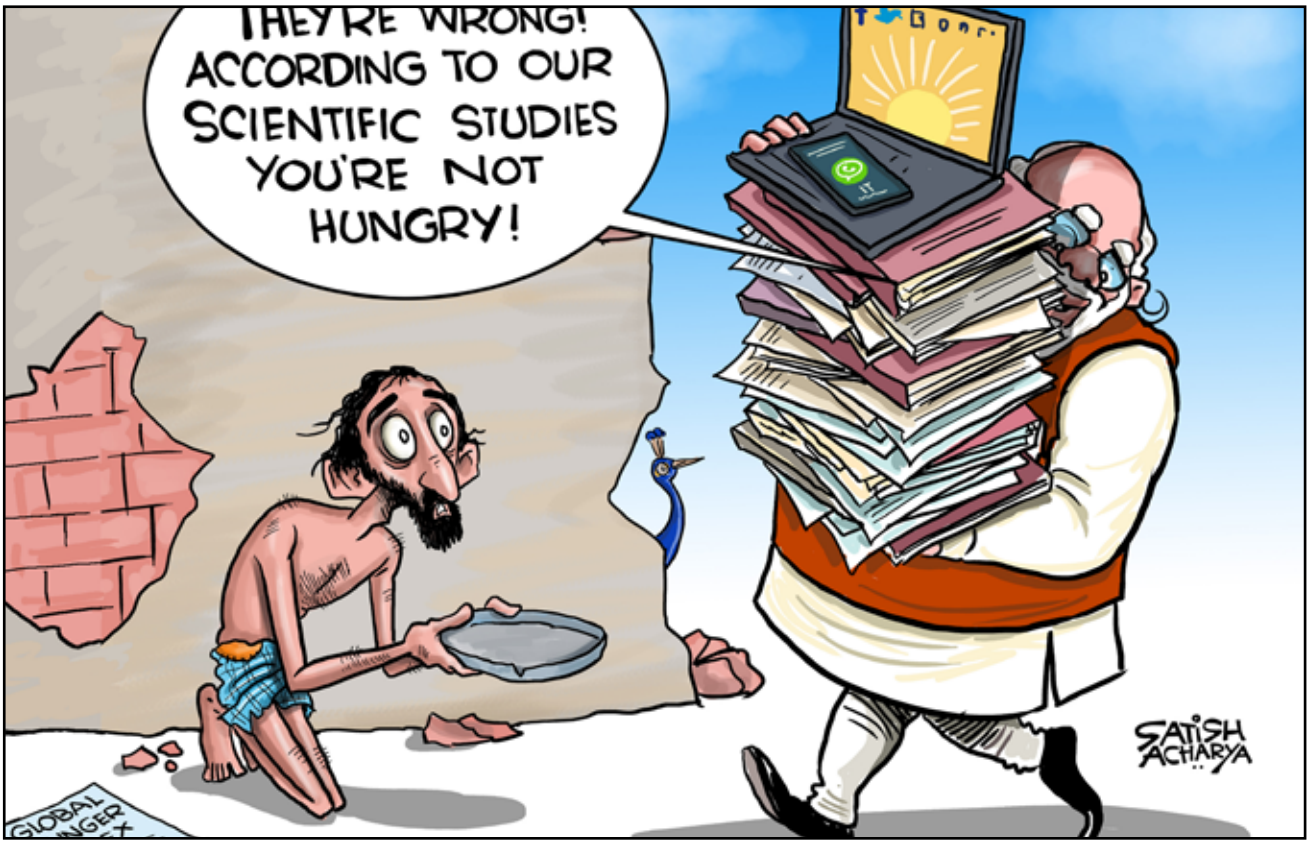
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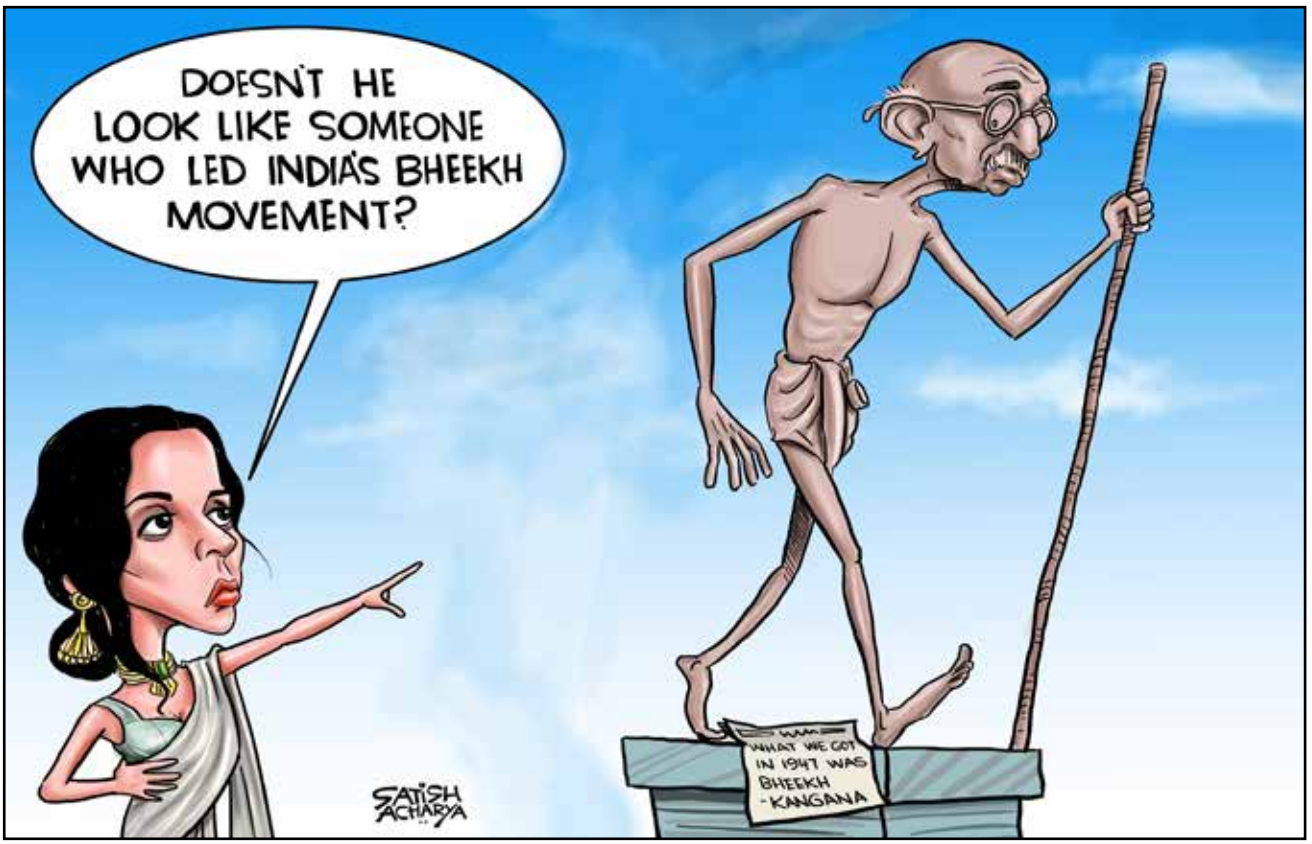
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