LEGAL MEDIA GROUP

LEGAL ERA

BY THE PEOPLE. FOR THE PEOPLE. OF THE PEOPLE

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Legal Era Celebrates Top Cross-Border (India Desk) Lawyers for their Legal Finesse & Excellence

CREDITS

Legal Media Group

February 2022 | Vol. XII | Issue X

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.

Aakriti Raizada
Founder & Managing Editor

Not a pro-poor Budget

Finance Minister (FM) NIRMALA SITHARAMAN underlined the overall intent of the Union Budget 2022-23 when she said that it sets the stage for an AMRIT KAAL (golden period) over the next 25 years, culminating in a vision for India in 2047 as enunciated by Prime Minister NARENDRA MODI in his Independence Day speech last year.

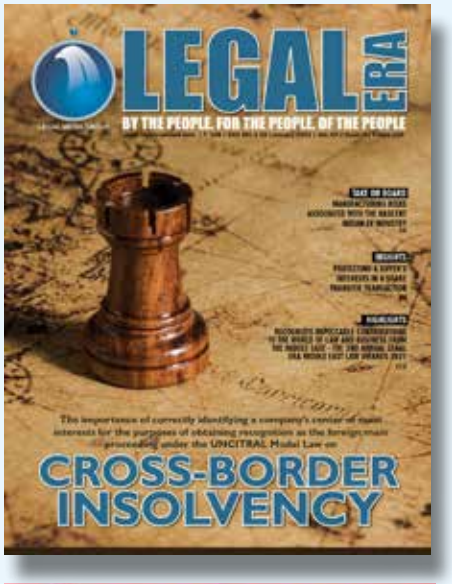
One of the highlights of the Budget is that it is bigger and focuses on investment in infrastructure by increasing capital expenditure to help the economy recover from the COVID-19 pandemic. The Budget gives considerable importance to the GATI SHAKTI MASTER PLAN fueled by seven key engines i.e. roads, railways, airports, ports, mass transport, waterways and logistics infrastructure. Separately, nearly 2,000 KM of the rail network will be brought under indigenous, world-class technology for safety - and capacity - augmentation in addition to the introduction of 400 new-generation VANDE BHARAT trains over the next three years. The Special Economic Zones Act will be replaced with new legislation allowing states to become partners in developing enterprise and service hubs. Also, the outlay under the 'Scheme for Financial Assistance to States for Capital Investment' has been increased from ₹ 15000 CRORE to ₹ 1 LAKH CRORE to help the states accelerate overall investments in the economy. Chemical-free natural farming will be promoted across the country with a focus on the agricultural land alongside the River Ganga in the first stage. The use of KISAN DRONES will be promoted for crop assessment, digitization of land records, and spraying of insecticides and nutrients. Domestic manufacturing and warehousing are poised to benefit from the additional allocation under the Production Linked Incentive (PLI) Scheme for solar PV modules. The extension of the Emergency Credit Linked Guarantee Scheme (ECLGS) up to March 2023 and an additional allocation of ₹ 50000 CRORE is a positive step expected to benefit the MSME sector, especially the beleaguered hospitality sub-segment. Completion of 80 lakh homes and an allocation of ₹ 48000 CRORE have been announced under the PRADHAN MANTRI AWAS YOJANA (PMAY). Spectrum auctions will be conducted in 2022 to facilitate the rollout of 5G mobile services. Considering space constraints in urban areas, the introduction of a battery-swapping policy and frame interoperability standards have been proposed for electric vehicles. While the RBI will introduce digital currency in the next fiscal year using BLOCKCHAIN and other supporting technology, the Centre will impose a 30% tax on income from crypto currencies and other digital assets, putting them in the highest tax band. Also, losses from the sale of crypto currencies will not be able to be offset against other income. E-passports using embedded chips and futuristic technology will start rolling out in FY 2022-23 to make overseas travel more convenient.

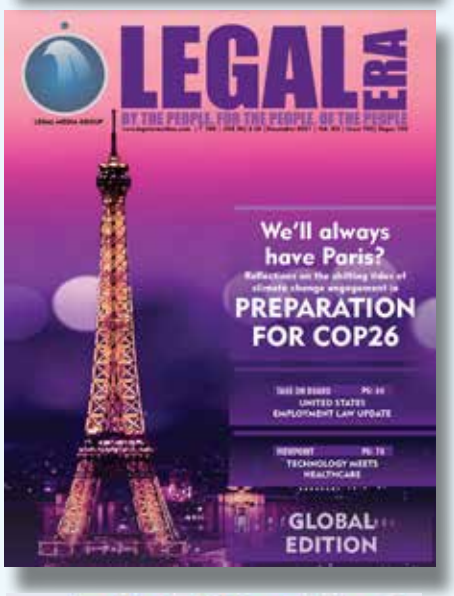
> "One of the highlights of the Budget is that it is bigger and focuses on investment in infrastructure by increasing capital expenditure to help the economy recover from the COVID-19 pandemic.

While the Budget has stayed true to the long-term goal of complementing macro-growth, status quo has been maintained on tax rates for individuals. Some benefits can be seen in the form of capping at 15% the surcharge on long-term capital gains (LTCG) arising from the transfer of any type of asset; allowing taxpayers to correct errors and file updated returns within two years from the end of the relevant assessment year; and exemption of amount received by taxpayers from employers or others for medical treatment of COVID-19. Further, deduction of employer's contribution to the National Pension Scheme (NPS) for state government employees has been increased from 10% to 14% to bring parity with their central government counterparts. Then again, the Budget does not give any tax breaks to the middle class or cash handouts to the poor, thus missing the opportunity to address reduced consumer spending in the wake of erosion of real income and savings. Key sectors such as healthcare and rural employment and development remain relatively neglected.

The February edition of Legal Era Magazine has some interesting reads on Environmental Social Governance (ESG), work-from-home (WFH), the hybrid model and the CCI ruling in the Amazon versus Future dispute apart from a couple of articles on the Union Budget 2022-23 and regular features highlighting legal developments from around India and the world. Don't miss it and do write in with your comments and suggestions. We always love to hear from you!

'LEGALLY LOVED' BY THE PEOPLE. FOR THE PEOPLE





"I have enjoyed a continued association with Legal Era for over a decade now. They have really set the gold standard for content creation and dissemination in the corporate and legal services industry. I have been a longstanding subscriber of their magazine and since the outbreak of the pandemic, have really enjoyed following their e-updates and newsletters. Not to be missed are the Legal Era Awards, a red letter day in every Indian lawyer's calendar."

Arush Khanna
Partner, Numen Law Offices

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"It is always wonderful to collaborate with Legal Era. Legal Era is moving from strength to strength in each edition. I wish Aakriti and her team - all the best"

Bindu Janardhanan
Partner, Squire Patton Boggs

.....

"Hearty Congratulations to the Legal Era team. The magazine has come a long way from its inception. Wish the team continued success in future."

Divya Shetty
Lawyer, Benguluru

.....

Look forward to the interviews in Legal Era Magazine. The regular features are also very interesting and informative. I recommend Legal Era Magazine to every legal professional."

Tanmay Bhat
Law Student, New Delhi

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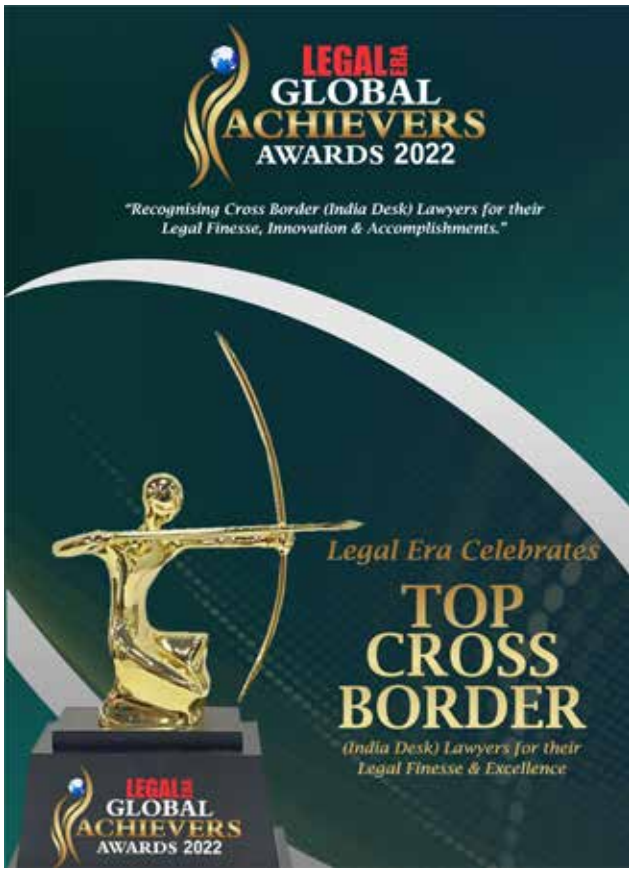
"While I am an avid reader of Legal Era Magazine, I would encourage the editorial team to publish more original content including features and analyses."

Vicky Singh
Lawyer, Chandigarh

QUICK GLANCE




ADAPTING TO THE NEW NORMAL
WFH


THE CCI ORDER IN THE
AMAZON DISPUTE:
A TAD OVERZEALOUS?


The Importance Of
Trust In
Merger Regulation
Under Competition
Law In India


E-business
business
Growth
finance
money
DIGITAL
ENTERPRISES
A NEW CHALLENGE TO
COMPETITION AGENCIES


THE HYBRID WORK
MODEL & LABOR LAW
CONSIDERATIONS
IN INDIA
FOR COMMERCIAL
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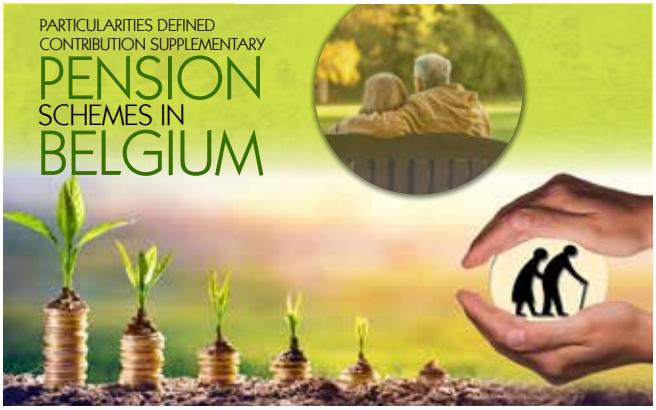
A GLOBAL AFFAIR:
INFLUENCER
GUIDELINES
A BRIEF ANALYSIS


PARTICULARITIES DEFINED
CONTRIBUTION SUPPLEMENTARY
PENSION
SCHEMES IN
BELGIUM

CONTENTS

GOOGLE GAINS EQUITY STAKE IN BHARTI AIRTEL

Based on preferences, the shares will be allocated by Google

Bharti Airtel Limited's 1.28 percent equity stake was acquired by Google, the software giant.

As part of its Google for India Digitization Fund, the software giant will capitalize up to US$1 billion in the telecom major. As reported by ET, the agreement includes Google capitalizing $700 million to gain 1.28 per cent ownership in Airtel and up to $300 million towards potential multi-year commercial agreements.

Led by Partner Anand Lakra, J. Sagar Associates guided Google and the team

On acquisition, Bharti Airtel was being advised by AZB & Partners. Partners Anil Kasturi and Ashish Pareek headed the team

Google has been suggested by AZB and Economic Laws Practice on Competition aspects.

Combining around ₹52,243 million (US$700 million) Google International LLC will be selected 71,176,839 Bharti Airtel's equity shares based on preference at ₹734 each.

FRESHFIELDS AND LINKLATERS ADVISE ON SPAC

Partners Gilbert Li and Lipton Li led the Magic Circle law firm's team.

Freshfields Bruckhaus Deringer, an international law firm, headquartered in London, is advising Aquila Acquisition Corporation (AAC), a special purpose acquisition company (SPAC) on its planned IPO in Hong Kong.

The Magic Circle firm Linklaters advised the joint sponsors.

AAC was jointly established by CMB International Capital Corporation and AAC Management Holding.

Aquila's was Hong Kong's first application under the new SPAC listing rules, which came into effect on 1 January. The Hong Kong Stock Exchange introduced SPAC's new rules in December last.

Established in 2021, Aquila is registered in the Cayman Islands. According to the company's

brochure, its key interest lies in the acquisition of one or multiple companies. Its target audience is the Asians, especially the Chinese, and also companies in the new economy such as green energy, life sciences, and advanced technology and manufacturing.

The Linklaters team was led by partners Gilbert Li and Lipton Li, with the Maples Group acting as offshore counsel to the issuer.

CYRIL AMARCHAND MANGALDAS ADVISED MEDPLUS HEALTH IPO

Cyril Amarchand Mangaldas acted as legal counsel to MedPlus Health Services Limited (MedPlus) and to Premji Invest.

Cyril Amarchand Mangaldas advised ₹ 1,398 crore Initial Public Offering (IPO) for MedPlus. This is the first IPO in India by a company engaged in the business of pharmacy retail.

MedlPlus is the second largest pharmacy retailer in India, and offers a wide range of products, including pharmaceutical, wellness products and fast-moving consumer goods.

The Capital Markets practice of Cyril Amarchand Mangaldas advised on the IPO Transaction (Offer). The Transaction team was led by Vijay Parthasarathi, Partner; with support from Rohit Tiwari, Principal Associate; Tanvi Kini, Senior Associate; Satakshi Sharma, Associate; Akhileshwari Anand, Associate.

The Premji Invest team was led by Reuben Chacko, Partner, with support from Janhavi Manohar, Principal Associate, Pragya Gupta, Associate.

Additionally, Avinash Umapathy, Partner; Sangita John, Partner; and Sharada Ramachandra, Partner; with support from Nandita Menon, Senior Associate; advised Premji Invest on certain financial and corporate matters.

The Offer involved sale of 17,573,342 Equity Shares of face value of ₹ 2 each for cash at a price of ₹ 796 per Equity Share (including a premium of ₹ 794 per Equity Share) ("Offer Price") aggregating to ₹ 13,982.95 million, comprising of a Fresh Issue of 7,544,511 Equity Shares aggregating to ₹ 6,000 million (The "Fresh Issue") by MedPlus Health Services Limited; and an Offer for Sale of 10,028,831 Equity Shares aggregating to 7,982.95 million (the "Offer for Sale").

Shardul Amarchand Mangaldas & Co. advised as Indian legal counsel to Axis Capital Limited, Credit Suisse Securities (India) Private Limited, Edelweiss Financial Services Limited, and Nomura Financial Advisory and Securities (India) Private Limited who acted as book running lead managers (BRLMs) to the Issue.

Sidley Austin LLP acted as a International legal counsel to the BRLMs. Samisti Legal LLP were the Indian legal counsel to the Promoters.

The Transaction was signed on May 26, 2021 and was closed on December 16, 2021.

SHARDUL AMARCHAND MANGALDAS ADVISES VODAFONE IDEA

It pertained to transaction-related issues and real estate regulatory matters.

One of India's leading full-service law firms, Shardul Amarchand Mangaldas & Co has advised Vodafone Idea Business Services on the assignment of rights in land to the STT Global Data Centres India.

The deal involved title due diligence of land, ascertainment and advise relating to title-related

matters, real estate regulatory issues concerning the Urban Land (Ceiling and Regulation) Act, and the calculation of Maharashtra Industrial Development Corporation (MIDC) payments.

It also included guidance on environmental clearance and Package Schemes of Incentives and the policies of the Government of Maharashtra.

The transaction documents were signed in June last.

The team was led by Radhika M Dudhat (partner); Rachna Bagri (principal associate); Mitisha Gaur (associate); and Aditi Rastogi (associate). The regulatory team was led by Radhika M Dudhat and Priyanka Sheth (principal associate).

SHARDUL AMARCHAND MANGALDAS & CYRIL AMARCHAND MANGALDAS ADVISED MEDPLUS HEALTH SERVICES IPO OF US$ 183 MILLION

Shardul Amarchand Mangaldas & Co. advised Axis Capital Limited, Credit Suisse Securities (India) Private Limited, Edelweiss Financial Services Limited and Nomura Financial Advisory and Securities (India) Private Limited (the "Book Running Lead Managers") on the initial public offering by Medplus Health Services Limited comprising a fresh issue by the Company and an offer for sale by PI Opportunities Fund – I and certain other selling shareholders. The deal is valued at USD 183 million approximately. The date of transferring of equity shares is 20 December, 2021 and the date of listing on the BSE and NSE is 23 December, 2021.

Nikhil Naredi, Partner

The Offer has been oversubscribed 53.67 times, with the QIB portion oversubscribed 114.19 times and non-institutional bidders portion oversubscribed 87.08 times.

The capital markets team was led by Nikhil Naredi, Partner; Mubashshir Sarshar, Principal Associate; Oindree Bandyopadhyay, Associate; Harini Jambunathan, Associate; Shreyans Jain, Associate; and special thanks to Tarun Srikanth, Associate. The legal team to one of the shareholders, Lavender Rose Investment Ltd (Warburg Pincus Group) was led by Ashni Roy, Partner; Monal Mukherjee, Partner; Neha Shaw, Principal Associate; and Chintan Aashwini, Associate.

Cyril Amarchand Mangaldas advised Medplus Health Services Limited and PI Opportunities Fund – I as to Indian law. Sidley Austin LLP advised the Book Running Lead Managers on International law aspects. Samisti Legal LLP advised the promoters as to Indian law.

SAM & KHAITAN & CO ADVISED IDBI BANK & ASSETS CARE

Deepto Roy, Partner & Soummo Biswas, Partner

Shardul Amarchand Mangaldas & Co. advised IDBI Bank Limited to assign stressed loans to IVRCL Chengapalli Tollways Limited to Assets Care & Reconstruction Enterprise Limited ("ACRE") via Consortium of banks comprising of Karur Vysya Bank, Union Bank of India, State Bank of India, and Bank of Baroda ("Consortium").

The deal is valued at USD 67.8 million approximately. The date of closing was 10 November 2021.

It is the first assignment and transfer of stressed assets transaction under the Master Directions.

The transaction team was led by Deepto Roy, Partner; Soummo Biswas, Partner; Pranav Nanda, Senior Associate; Shubham Sharma, Senior Associate; and Archis Choudhary, Associate.

Khaitan & Co advised the Assets Care & Reconstruction Enterprise Limited.

SHARDUL AMARCHAND MANGALDAS GUIDES KOTAK MAHINDRA AND HSBC

It was in connection with the rights issue of equity shares. India's century-old law firm Shardul Amarchand Mangaldas & Co has advised Kotak Mahindra Capital Company and HSBC Securities and Capital Markets (India) in connection with the rights issue of equity shares by The Indian Hotels Company.

The deal was valued at USD 260.58 million. The date of closing was 15 December 2021.

It was the largest rights issue transaction by a listed hospitality company in 2021 and the third-largest by a listed entity in the country.

The capital market team was led by Nikhil Naredi (partner); Sayantan Dutta (partner); Aditya Iyer (senior associate); Oindree Bandyopadhyay (associate); Tanvi Prabhu (associate); and Shweta Singh (associate).

Nikhil Naredi, Partner & Sayantan Dutta, Partner

AZB, CAM: RELIANCE $200 MILLION INVESTMENT IN DUNZO

An investment of $200 million by Reliance Retail led to a 25.8 percent stake in Dunzo on a fully diluted basis.

Dunzo, a hyperlocal delivery startup, has raised $240 million (around ₹1800 crore) in a funding round led by Reliance Retail Ventures with involvement from prevailing investors Lightbox, Lightrock, 3L Capital, and Alteria Capital.

An investment of $200 million by Reliance Retail led to a 25.8 percent stake in Dunzo on a fully diluted basis.

Cyril Amarchand Mangaldas acted as Dunzo's legal counsel and partner Karan Pahwa led the project team.

Partner Ashwath Rau and Partner Jasmin Karkhanis led the AZB & Partners team that advised Reliance Retail. As part of the team led by Manav Nagaraj with Senior Associate Smita Rakshale, Shardul Amarchand Mangaldas advised Light Rock.

DSK LEGAL ADVISED NOW

DSK Legal advised NOW (TapTap Meals Private Limited), a B2B commerce platform and its promoters Vivek Pandey and Bharat Khandelwal and all the existing investors and shareholders including CK Jaipuria Group in selling their entire stake in NOW to Borzo (previously known as WeFast).

Borzo is a global crowdsourced same-day delivery marketplace operating in 10 countries. Its investors include Mubadala, VNV Global, RDIF, Flashpoint Venture Capital.

NOW was launched in 2015, as a B2B commerce platform for micro retailers. With a fleet of over 1,500 riders, NOW has nearly 2 million orders yearly for KFC, Pizza Hut, Apollo Pharmacies, Amazon, and numerous different companies.

DSK Legal assisted NOW in inter alia: (i) structuring of the entire transaction; (ii) reviewing, revising and negotiating of the Share Purchase Agreement; and (iii) Closing of the transaction.

The DSK core team representing NOW, for the transaction comprised of Harvinder Singh, Partner (who acted as the lead partner on the transaction), Shruti Dogra, Principal Associate and Manhar Gulani, Associate.

Mr. Aparajit Bhattacharya, Partner, acted as the relationship partner and provided strategic inputs on the transaction.

Borzo was represented by Kochhar & Co.

DSK LEGAL ADVISED CK JAIPURIA GROUP

DSK Legal advised CK Jaipuria Group in its investment in Home-grown gamified social media app "Explurger". Explurger is a new-age social media platform built on Artificial Intelligence (AI), which was launched on August 15, 2020. Apart from India, the app debuted in the US, Britain, Germany, South Africa, etc. and already has users from more than 40 countries.

The AI of the app automatically creates a travelogue for its users, keeping a count of the exact miles, cities, countries and continents a user has traveled to. The users can even create a bucket list of places he wishes to visit and share his future travel plans with fellow Explurgers.

CK Jaipuria Group has investments encompass various sectors including Real Estate, Beverages, Retail, Engineering, IT and Plastics.

DSK Legal assisted CK Jaipuria Group in inter alia: (i) reviewing, revising and negotiating of the Share Subscription cum Share Holders Agreement; and (ii) Closing of the transaction.

DSK Legal
True Value, True Values

The DSK core team representing CK Jaipuria Group, for the transaction comprised of Harvinder Singh, Partner (who acted as the lead partner on the transaction), Shruti Dogra, Principal Associate and Archit Gupta, Associate.

Mr. Aparajit Bhattacharya, Partner, acted as the relationship partner and provided strategic inputs on the transaction.

MONTEK MAYAL HEADS OSBORNE PARTNERS ASIA PRACTICE

Montek Mayal

He was recently appointed the South Asia Representative for Young International Council for Commercial Arbitration.

Montek Mayal, former senior managing director and economic consulting practice leader for India, at FTI Consulting, has joined Osborne Partners as a partner and regional head.

Mayal will also be the founder and head of the firm's Asia and the Middle East practice. He will continue to engage with expert witness and quantum/damages work, an increasingly growing field particularly in India, owing to the volume of investments.

He will be joining his long-time mentor Chris Osborne, who earlier led FTI's global disputes and economic consulting business.

Earlier, Mayal was appointed as a damages/ quantum expert in domestic and international arbitration and in competition matters on over 100 occasions, both in India and globally. From 2017, he testified before the tribunals on more than 25 occasions. These pertained to claims ranging from $5 million to over $1.5 billion.

Mayal was recognized as a Global Elite Thought Leader in Who's Who Legal's Arbitration Review 'Expert Witnesses' for 2021 and 2022. Globally, he is one of the 29 practitioners and the only one from India to enter the listing. He received the highest number of nominations from peers, corporate counsel and other market sources.

Presently, he serves as a Vice-Chairman of the Society of Construction Law in India; Member, Steering Committee, Young MCIA; Co-Chair, Society of Construction Law's Young Leaders Group (India); and Member, Founding-working group, Indian Association of Litigation Finance. Recently, he was appointed as the South Asia Representative for Young International Council for Commercial Arbitration.

RITA KU LAUNCHES FAMILY LAW BOUTIQUE

Three of her associates at Withers have also joined her firm.

Rita Ku, a former partner at Withers, has left the firm to set up her own enterprise Rita Ku & Solicitors (RKS) in Hong Kong. The firm specializes in family law.

With nearly two decades of experience in family law, she served at Withers for over a decade. Ku focuses on family dispute matters including jurisdiction, divorce, children and ancillary relief. She also advises on issues involving complex asset holdings structures.

At Withers, she was a partner in the divorce and family team and also a regional divisional leader of the dispute resolution team. In 2021, she was one of the finalists in the category of Woman Lawyer

Rita Ku

of the Year at the ALB Hong Kong Law Awards. Her three associates at Withers have also joined Ku's firm. They are Elaine Cheung, Sarina Cheung, and Natalie Leong. Additionally, RKS has hired Sindy Wong as a senior associate from HSBC. For over six years, Wong had worked at Withers.

SARAH FORTT AND BETTY HUBER JOIN LATHAM & WATKINS AS PARTNERS

Sarah Fortt & Betty Huber

International firms hire environmental experts as the movement becomes increasingly important to their clients

US-based Sarah Fortt and Betty Huber have been hired by Latham & Watkins as partners to co-chair its environmental, social and governance (ESG) practice along with London partner Paul Davies in the US.

While Fortt worked with Vinson & Elkins, Huber served Davis Polk & Wardwell. Both led the ESG teams. Fortt will now split her time between Latham's newly-opened Austin base and its office in Washington DC, Huber will be based in New York.

The duo will be members of Latham's capital markets and public company representation practice group within the corporate department. They will advise public and private companies, financial institutions, investment funds and their boards on a range of ESG matters.

Commenting on the hires, Ian Schuman, chairman of the firm's capital markets and public company representation practice, said there were "perhaps no areas of the market with a greater need to intelligently and proactively address ESG issues than in the public company boardroom and in the context of major transactions."

"We are at the center of these discussions with the clients on a daily basis and are pleased to continue investing and extending our capabilities in this critical and growing space with the addition of these two fantastic partners," he added.

Both, Fortt and Huber, specialize in advising companies and their boards on ESG-related corporate governance, disclosure obligations and regulatory requirements.

In a statement, Latham said that Fortt regularly worked with boards on managing their approaches to crisis management and preparedness, succession planning and board education related to ESG and human rights.

Similarly, Huber had 25 years of experience advising on ESG matters in connection with hundreds of transactions. She specialized in areas including human rights, sustainable finance, 'net zero' commitments and targets, and shareholder activism.

Huber spent almost 18 years at Davis Polk, including more than a decade as co-head of the firm's environmental group and three years as co-head of its ESG team.

JAYA KUMAR, FORMERLY WITH JSA, HIRED BY DFDL

She is a member of the Bar Council of Maharashtra

The Thailand-based law firm, DFDL, has hired Jaya Kumar as a Regional Practice Group Manager. She will be based at the firm's Bangkok office.

Jaya will be responsible for DFDL's mergers and acquisitions, banking, finance and technology, dispute resolution, labor and employment, restructuring and insolvency and tax practice groups.

She has over 14 years of experience in strategic business planning, client outreach, integrated marketing, business development, account management and market research within the legal industry.

Jaya has authored several articles related to branding, general business and women's empowerment.

She featured among the Top 10 people to watch in the business of law in Asia in 2021. The same year, she was recognized as APAC Women Content Champion, APAC Content Moguls and a Manager who could Connect, Develop and Inspire.

About Jaya Kumar

She holds an LLB degree from the University of Mumbai and a Bachelor of Arts in English Literature from Sophia College, Mumbai. She holds a diploma in Executive Education Program in developing and managing brands from the Indian Institute of Management, Ahmedabad. Currently, she is pursuing post-graduation in digital marketing and communication from the Mudra Institute of Communications, Ahmedabad. Jaya is a member of the Bar Council of Maharashtra and the Advisory Council of Law Gazette in India.

REED SMITH NAMES VETERAN PARIS PARTNER

Peter Rosher

Following nearly five years in the role, José Astigarraga steps down as chair, succeeded by Peter Rosher

A new arbitration practice leader, Paris-based partner, Peter Rosher has been appointed by Reed Smith, taken over from José Astigarraga. Astigarraga joined Reed Smith in 2017 and began his duties as the firm's arbitration practice leader.

Astigarraga's arbitration offering worldwide has expanded substantially over the past five years, with Rosher taking the helm of a practice that is rapidly expanding. More than 100 lawyers work on the firm's arbitration group, with many of them specializing in different industries.

Rosher has been involved with the arbitration of international commercial and investment treaties for nearly 30 years. Among his past roles include being a founding member of Paris Arbitration Week as well as vice-president of arbitral lobbying group

Paris, Home of International Arbitration - where he has served for past seven years as secretary general. The French Arbitration Association has also appointed him on board.

Global litigation department chair Peter Ellis thanked Astigarraga for his "strong leadership and keen strategic focus" in raising the firm's profile. In addition to being a partner, Astigarraga will remain in Miami.

The disputes team, which plays a key role in the firm's global dispute-handling ability, is a major component of the firm's 2024 strategic plan, and Ellis says he was pleased that Rosher has accepted the position, saying he had "shown remarkable leadership qualities since joining the firm."

Rosher noted that the firm is well-positioned across the key arbitral centers of the world. He has also emphasized its sectoral approach and expertise in arbitral disputes. Due to his marvellous efforts, José was able to lay down exceptional foundations, on which he plans to build further.

In Rosher's view, Astigarraga's leadership should be built upon three different ways. Firstly, it should continue to develop its regional and sector-specific strategies. Secondly, the company will expand its presence in emerging markets, like India and Francophone Africa and new fields, like the metaverse. A third improvement is that it will add new arbitral talent.

They both joined the firm in 2017. Astigarraga left his own firm, Astigarraga Davies, which he ran for 17 years and joins Rosher from Pinsent Masons, where he worked as a partner for more than two years.

In 2021, Simon Greer was promoted in London, along with other disputes partners. Suzie Savage was promoted in partnership in 2022, along with other disputes partners.

Tim Cooke and his team from Stephenson Harwood were hired in 2021 in Singapore, James Willn also from Stephenson Harwood in the Middle East. Those new hires in 2019 led to the addition of Baker McKenzie partner James Duffy from New York and Freshfields Bruckhaus Deringer counsel Ben Love.

Meanwhile, Reed Smith's construction disputes partners Vincent Rowan and Shareena Edmonds were hired by King & Spalding in January 2021. However, Love left Reed Smith to join Boies Schiller & Flexner as a partner in September 2021.

Reed Smith has also lost three successive commodities partners to HFW in Singapore, as disputes specialist Dan Perera joined Peter Zaman, a former Reed Smith Singapore managing partner. Barry Stimpson and Jessica Kenworthy, former Reed Smith shipping partners, left Reed Smith for Squire Patton Boggs in November 2019.

JUSTICE A K SIKRI JOINS LONDON'S 4 PUMP COURT

Justice A K Sikri

Former Supreme Court judge Justice A K Sikri has joined 4 Pump Court, leading commercial barristers' chambers in London. He was invited to be an associate member of the chambers.

In a press release, Justice Sikri commented, "It gives me immense pleasure to be an associate member of 4 Pump Court Chambers. The globalization at the economic level has not only blurred the national boundaries, but it has also resulted in a deeper co-operation of different stakeholders across the countries."

"Alongside, it has also witnessed the convergence of laws, particularly in areas having trans-

border ramifications. International arbitration is one such field. Judiciaries of the countries are liberally adopting a global approach in their decisions and freely rely upon the experience of other jurisdictions by citing their judgments," he mentioned

"It equally applies to the arbitrators as well as the practitioners on international disputes. In this scenario, I feel delighted to have this relationship with the Chambers and hope that it would be highly productive for all of us," the former judge of the apex court added.

About Justice A K Sikri

Justice Sikri had enrolled as an advocate in 1977 and practiced in Delhi. He was elevated as a judge of the Delhi High Court in 1999. For about a year, in 2011, he served as the acting Chief Justice of the Delhi High Court. Subsequently, in 2012, he was appointed as the Chief Justice of the Punjab and Haryana High Court. A year later, Justice Sikri was elevated to the Bench at the Supreme Court of India where he served for about six years before retiring in March 2019.

Post-retirement, he was appointed as Chairperson of the News Broadcasting Standards Authority (NBSA) by the News Broadcasters Association (NBA). In July 2019, he was appointed as a judge of the Singapore International Commercial Court (SICC).

About 4 Pump Court

It is a full-service commercial set of barristers' chambers with expertise in international arbitration, commercial dispute resolution, professional negligence, technology and telecoms, banking and financial services, shipping, energy, construction and engineering and insurance and reinsurance.

The associate members at 4 Pump Court are strategic partners in overseas jurisdictions but not full members of the chambers. They represent clients in major arbitrations in a wide range of disputes across their areas of expertise.

In 2018, advocate Abhimanyu Bhandari was invited to join 4 Pump Court as an associate member.

HERBERT SMITH FREEHILLS CEO TO CO-CHAIR WORLDWIDE CAMPAIGN, ENHANCE NUMBER OF WOMEN ARBITRATORS

As almost 5,000 people sign the Pledge, diversity and inclusion champion Justin D'Agostino takes the lead.

Hebert Smith Freehills' (HSF's) head Justin D'Agostino will lead an international initiative that aims to increase the number of women arbitrators.

In starting the Equal Representation in Arbitration Pledge steering committee, D'Agostino will replace BP in-house lawyer Samantha Bakstad, who will step down from that position. She will work alongside founder and co-chair Sylvia Noury QC, who is head of Freshfield Bruckhaus Deringer's London international arbitration team.

Furthermore, HSF has committed consultant Brianna Young, who is one of the architects of Hong Kong's recently proposed litigation funding reforms, to fill in during the

Justin D'Agostino

incumbent's maternity leave as the pledge's secretary.

Since 2016, over 5,000 people have signed the Pledge, which is backed by prestigious law firms, corporations, and arbitration institutions. It aims to reach full parity with

regard to the number of women named arbitrators.

According to statistics from the International Centre for Settlement of Investment Disputes (ICSID) for the 2021 financial year, 31percent of appointments to tribunals, ad hoc committees and conciliation panels were made by women, up from 14percent the preceding year.

Claudia Salomon, a former partner at Latham & Watkins, was elected as the first woman to lead ICC Court of Arbitration (ICC), a Latham & Watkins signatory, in its nearly 100-year history last June.

"Thus far, the gender diversity initiative has contributed directly to so much progress in arbitration and courtrooms," said D'Agostino.

HSF's global head of disputes D'Agostino has been a long-term supporter of the Pledge, having supported the initiative from the beginning. A leader of a major law firm and one of the few openly gay lawyers in it, he has widely known for his advocacy of inclusion and diversity within HSF as well as the broader legal community.

Those in the community who consider themselves to be senior were pleased with the appointment of such an individual to lead the Pledge.

D'Agostino has been described as a "true global leader in diversity and inclusion" by Robert Stephen, registrar of the LCIA-DIFC Arbitration Centre, who notes that his appointment is "proof that major law firms and the broader arbitration community increasingly recognize the importance of equal representation for women in arbitration".

"As a long-time defender of diversity initiatives, Justin's appointment signals the level of support required to do more to sustain and enhance equal representation for women in arbitration," said Chiann Bao, vice president of the ICC and member of Arbitration Chambers in Singapore.

As the CEO of HSF, D'Agostino has spearheaded multiple diversity initiatives, including the launch of an action plan, unveiled in September 2020, for improving ethnic diversity and establishing a People & Culture Advisory Board.

The head of HSF's global arbitration division, Paula Hodges QC, said: "I am elated that the emergence of gender diversity continues to gain traction in the arbitral community, particularly since the Pledge was introduced. Justin and Briana are active supporters of the Pledge and we are very proud of them."

Meanwhile, Bakstad will continue to oversee the corporate subcommittee she set up in 2019. It includes representatives from companies like Barclays, Chevron and Airbus along with numerous litigation funders.

In May 2021, the ICC reported that the number of women who are appointed to arbitrate in ICC-administered cases would rise from 312 appointments in 2019 to 355 appointments in 2020, representing 23percent of all confirmations or appointments, which were 21.1percent in 2019.

SOUMITRO MUKERJI JOINS MAYER BROWN AS PARTNER

Soumitro Mukerji

The banking and finance expert earlier worked at Hogan Lovells.

Global law firm Mayer Brown has welcomed banking and finance expert Soumitro Mukerji as a partner in its Singapore office. The firm now has 11 partners in Singapore.

Mukerji will also be co-chair of Mayer Brown's India practice. He has advised on fund-level financing, leveraged and acquisition financing, general corporate financing and structured lending for nearly 15 years.

He worked with Hogan Lovells and since 2019 has advised on fund finance matters exceeding US$7 billion in value.

Prior to that, Mukerji worked in London and Mumbai with law firms including Linklaters and the erstwhile Amarchand & Mangaldas & Suresh A Shroff & Co.

ARAVAMUDHAN K ELEVATED AS WALT DISNEY'S EXECUTIVE DIRECTOR

He served in the company as a senior vice-president for over four years.

Aravamudhan K, popularly known as Aru in the broadcast industry, has been elevated as Executive Director, Government Relations (GR) at The Walt Disney Company (TWDC).

During his 15 years tenure with Star India, he worked closely with industry associates, policymakers and regulators on several issues facing the broadcast sector.

In a Linkedin post, Aravamudhan wrote about completing the exciting and eventful years at Star India. "I witnessed many changes in the broadcasting sector and in the company thanks to my mentors, colleagues, friends, family and external stakeholders who played a major role in my evolution as a GR professional."

He joined Media Content and Communication Services (MCCS), the media arm of Star India (and the owner of Star News), in 2006 as a manager. A year later, he was made a part of Star India to handle the regulatory

Aravamudhan K

approvals, compliance, internal and external communications, and government relations.

He has nearly three decades of experience in the broadcast sector. Aravamudhan began his career from Production House news video magazine, Eyewitness and went on to freelance for the Indian public service broadcaster, Doordarshan to cover elections.

Later, he shifted to the general entertainment channel, Home TV and then to media houses SAB TV, UTV and ITV and news channel STAR News.

SHIVANI SANGHI JOINS FIELDFISHER TO BOOST THEIR INDIA PRACTICE

Shivani Sanghi is on board as a partner and head of India practice

An international arbitration and litigation specialist, Shivani Sanghi has joined Fieldfisher as a partner and head of the firm's India practice. She will be with its commercial disputes team in London.

Commenting on her appointment, Colin Gibson, head of dispute resolution at Fieldfisher said, "We are very excited to bring Sanghi on board, given her experience in India and her strong foundation in Russia and CIS-related arbitration and commercial litigation.

"Our London commercial disputes practice continues to go from strength to strength, as evidenced by the high-quality talent we continue to attract to the firm. We look forward to Sanghi joining us and to developing growing areas of geographical expertise within our firm."

Sanghi added, "I am delighted to be joining a meritocratic firm that supports young partners to build up new areas of work and bring fresh skills to the team. Fieldfisher has an excellent reputation for commercial disputes and I am keen to add my skills and experience to its bench strength in international arbitration, with a particular focus on India."

Dual-qualified, Sanghi is a solicitor-advocate in England and Wales and an advocate in India. Her practice at Fieldfisher will center on developing her existing expertise and client base in India-related arbitrations, a rapidly expanding area of business and a jurisdiction of focus for Fieldfisher.

She acts for clients in a variety of sectors, including media, hotel, energy, telecom, banking, private equity, pharma and software technology. She has represented clients in several high-profile cases before the English courts, including the Court of Appeal and the UK Supreme Court.

Sanghi has also represented clients in high stake arbitrations under the rules of various institutions in venues around the world and has significant experience in emergency arbitrations.

Having experience of the Indian courts, including the Supreme Court and the Delhi High Court, Sanghi advised Indian corporates on matters including cross-border disputes involving multi-party arbitrations and high stake contractual disputes related to anti-suit injunctions, challenges to foreign arbitral awards and other aspects of private international law.

A 2009 graduate of the National Academy of Legal Studies and Research (NALSAR), Hyderabad, she was a part of the commercial litigation and arbitration teams at King & Wood Mallesons (formerly S J Berwin), Fried Frank and Covington & Burlington.

LEGAL ERA GLOBAL ACHIEVERS AWARDS 2022

"Recognising Cross-Border (India Desk) Lawyers for their Legal Finesse, Innovation & Accomplishments."

Legal Era Celebrates

TOP CROSS BORDER

(India Desk) Lawyers for their Legal Finesse & Excellence

Have cross-border deals and transactions become harder than they used to be? Especially given the rapidly changing legal landscape across the globe over the past two years? Has the subject matter of disputes and matters before courts become complex? Especially considering that digital tools and digital mediums now constitute the heart of these matters? Is the law keeping pace with the growth of technology and its consequent impact on cross-border matters? Especially when tech users are not only invisible but also nearly unidentifiable across the globe?

If so, don't we agree that it's time we recognize those who have been key players in the field of cross-border legal practice?

Legal Era plugged this gap on 4 February 2022. In a glittering high-profile virtual awards' ceremony attended by global icons and stalwarts across time zones, Legal Era proudly hosted and marked their **Global Achievers Awards 2022 "Recognizing Cross-Border (**India Desk) **Lawyers for their Legal Finesse, Innovation & Accomplishments." This was an occasion to celebrate legal finesse, innovation, and accomplishments of the top Cross Border (**India Desk) **Lawyers from Global Firms** who lead and assist all the inbound and outbound legal work while working with Indian clients in Indian geographies.

Legal Era Global Legal Media Group, a Think Tank of Global Experts, Lawyers & Law Firms has diversified into a mega global think tank of expert professionals in the field of business and law. It has been anticipating the needs of the legal community and empowering them with tools to succeed in these rapidly-changing times. The brand plays a leading role in thought leadership and policy debates by being the global voice of the legal fraternity.

Well connected with more than 75,000+ professionals, subscribers & members and with an international presence in Singapore, South Africa, the Middle East, the UK, and the US, Legal Era's vast array of slick services and solutions makes it the only brand serving the legal community with a comprehensive suite of content offerings and services in all mediums.

Rajesh Narain Gupta
Managing Partner
SNG & Partners

B Murli
General Counsel & CS
Nestle

Vineet Vij
Group General Counsel
Tech Mahindra Ltd.

Shahnaz Ahmad
Managing Director - Legal
Accenture

Aakriti Raizada
Founder- Legal Era
Legal Media Group

Well, Legal Era has done it again – nodding their heads and acknowledging the global icons who played a key role in transforming the legal landscape as cross-border lawyers. The cross-border legal professionals seated at the Indian Desk and who are assisting in the inbound and outbound legal work while they work with the Indian clients have been playing a pivotal role.

Today, every MNC has a South Asia business that requires extremely localized hand-holding at every legal touchpoint during their operations. No wonder every global law firm today has a cross-border lawyer that focuses on meeting these specific business needs rooted in emerging markets.

And Legal Era is conscious of the fast-growing need for both inbound and outbound legal assistance in emerging markets and equally conscious of the need to recognize the faces delivering such unique skill-sets and high-value assistance rendered over multi-jurisdictional matters.

The Legal Era team conducted extensive and exhaustive research that assessed the leading Cross-Border Lawyers from Global Firms and rewarded the deserving ones, rightfully. Based on review & data, the team shared the information with a panel of judges, an accomplished and independent fleet of stalwarts of the legal industry, and multi-jurisdictional matters experts, who thoroughly examined and churned out unbiased ranks. **Out of the umpteen nominations received, 150 cross border lawyers were shortlisted and from those, 30 winners were finalized - the most competent and credible Cross-Border Lawyers from Global Law Firms** who have been making an exceptional contribution to their firms, the legal industry, and the world of business and law, across continents. The Awards' Categories included diverse practice areas such as Corporate, law, M&A, capital market, security, dispute resolution, arbitration etc.

The event began with an earnest welcome address by Aakriti Raizada, Founder, Legal Era, well known for her vision to create One Voice One Community for knowledge-sharing across the Global Business - Legal Industry. Driven by unflinching commitment to create

opportunities and showcase the stellar talent of the country, Ms. Aakriti epitomized the uniqueness of the awards as she invited a huge round of applause for each one of the finalists for navigating the unchartered waters of the global pandemic and carving a niche for themselves as Cross-Border (India Desk) Lawyers.

Especially noting the significant role these lawyers played in placing India on the global map as a favored nation for investments and galvanizing our economic growth, she made a reference to Union Finance Minister, Nirmala Sitharaman's Budget Speech that highlighted the Government of India's strong commitment to 'minimum government & maximum governance', trust in the public, and ease of doing business.

In recent years, over 25,000 compliances have been reduced and 1486 Union laws have been repealed. **India is growing at an accelerated pace and people are undertaking multiple financial transactions... There has been a phenomenal increase in transactions in virtual digital assets. Cross-border insolvency too occupied a specific spot in the Annual Financial Statement.**

After Aakriti Raizada's emphatic address, **Dr. Lalit Bhasin, President, Society of Indian Law Firms, addressed the international gathering with the key message - Legal professionals should be integrated into a global legal profession in an era of cross-border economies.**

"There should be no borders for legal practice."

He made a fervent case for the need for Indian and foreign lawyers to work together to meet the goals of their respective clients.

"There has to be reciprocity between legal professionals throughout the world." Dr. Bhasin highlighted that the doors were already open for mutual cooperation in the form of exchange of technology, knowledge, and advice. Indian lawyers can advise foreign clients and vice versa. That was an urgency. He made a plea that the government should formalize the entry of foreign lawyers into India. They must regulate the entry. But remove the artificial barriers. Our law firms can handle any type of work that comes with all kinds of specializations. ***"The Indian legal profession is second to none. We have very eminent in-house General Counsels. And external counsels. SILF and BAI has recommended to the GOI that they should follow the Singapore Model of allowing foreign lawyers to come and practice in the country."***

In that context, Dr. Bhasin highlighted that the Legal Era Global Achievers Awards was an extremely critical occasion to recognize lawyers delivering unique skill-sets and high-value assistance rendered over multi-jurisdictional matters.

The **esteemed presenters** who shared the screen with Dr. Bhasin for the first half of the high-profile awards' evening were **Vineet Vij, Group General Counsel, Tech Mahindra; Ameet Naik, Managing Partner at Naik Naik & Co; and Shahnaz Ahmad - Managing Director, Legal, Accenture.**

Vineet Vij, Group General Counsel, Tech Mahindra expressed deep pleasure for having the opportunity to honour the stupendous efforts of the very best lawyers we have in today's times who have **not only made a significant mark for themselves at a global level but have also played a role in positioning India as one of the preferred nations for cross border investments.** ***"They can be surely called the flagbearers for India Inc. at the global level supporting end to end with multi-jurisdictional legal knowledge and procedural mastery."***

Explaining their increasing relevance today, Vineet Vij said: "While the role of cross-border lawyers had attained prominence in the last century with globalisation, but more so, their role has become pivotal with the onset of the pandemic. ***With recent changes in the digital world, new age structures like AI, blockchain, we are witnessing a truly seamless and borderless world with the ever increasing need to have the right legal counsel help us in our business engagements at the global level. Given the complex regulatory environment and regimen in India - right from FDI, project financing, M&As, data protection, anti-trust, IPRs, and multi-fold compliance requirements - the expectations from lawyers who partner and guide through cross-border transactions goes up multi-fold. And it really takes a lot of experience, unique skill sets, high value multi-jurisdictional assistance and support from the very best."***

Adding to Dr. Lalit Bhasin's plea on integration of the legal community globally, Mr. Vij

seconded his opinion, "I*'ve looked at multiple trans-border transactions as existing in over 50 countries and sometimes working with a pool of law firms for the same transaction. And I can tell you, the lawyers here are no less good than the lawyers anywhere else! There are just some finer points that we may not be equipped with sitting here in India. So, the collaboration works really well. We should formalize with some form of regulation. We bring that value at low cost and yet at a high quality."*

Ameet Naik, Managing Partner, Naik Naik & Co resonated with Vineet Vij and Dr. Lalit Bhasin on the economies being global and the lawyering community becoming one. He affirmed, "You must see that the legal community is developing. The Indian lawyering is rubbing off everywhere! ***India has become so important in lawyering across the globe. You are seeing a legal community developing and it's great to see an India focus.*** All the India desks are doing very well and are extremely busy. The budget on cross-border insolvency is very interesting and is a step in the right direction based on the Model Law. ***We are seeing healthy cross-border work - whether it's Singapore, Tokyo, Dubai... And international commercial arbitration. 40% of SIAC arbitrations are of Indian origin. And that is a great indication of where our litigation is going let alone transactions' work.***

And yes, integration is key. We will follow the Singapore model. ***Sitting on Zoom today, we are dialling into hearings there. Friends from Singapore are dialling into the Indian Supreme Court hearings. It is ever so increasing. One great takeaway is that today our colleagues are participating in hearings here!*** And in that context, events like these that recognize people participate in the development of India and who put India on the global map is very important."

Shahnaz Ahmad, Managing Director, Legal, Accenture encouraged the awardees and extended much congratulations to them. She thanked Legal Era for organizing such a wonderful event and acknowledged, ***"Legal Era is one of the most coveted in the industry and during these testing times organizing such an event and recognizing the efforts of competent lawyers stands as testimony to the team's hard work and diligence."***

The first set of Legal Era Global Achievers 2022 awardees not only received their coveted recognition but also shared their elation, the prime challenges they faced during the pandemic, and their strategy on cross-border practice for the years ahead.

The winners of the Legal Era Global Achievers Awards 2022 exhibited an applause-worthy drive to explore and excel in a niche space unconfined to specific practice areas. They have led the way for many other young lawyers to take the path less trodden. And undoubtedly, their contribution to making India a business-friendly destination for businesses worldwide was equally worth applause.

Dr. Lalit Bhasin closed the evening with his succinct thoughts summarized the crux and relevance of the Global Achievers Awards,

"These are very unique awards as they are being given to those cross-border lawyers who head the India-focused practice of the global law firms - so it appears as if we are honouring ourselves.

The awardees have at some point of time been an integral part of the Indian legal profession. At least they've done their legal education in India, for some years they practiced their legal profession in India, and then they went to foreign jurisdictions where again they made their presence felt by being a part of the India desk so that the commitment to remain India-focused was always there. ***So, these awards recognize the India lawyers and the foreign lawyers who have contributed significantly to the economic development of the jurisdictions for which they practiced and also the development of India's economy by providing legal support to the M&As, to the IPOs etc. Economies cannot achieve the desired result unless they have proper legal support. Even governments need such legal support to draw up the protocols etc. And these awardees have lent their services to enable that at a global level. Thank everyone for providing a service to our country. There is a great potential and opportunities galore ahead to collaborate with each other and make them more meaningful."***

Legal Era has set another benchmark at rewarding the Cross-Border (India Desk) Lawyers' fraternity with global visibility and relationship-building opportunities like no other. **This platform, the next Edition of the Global Achievers Awards 2023, and the potential for opportunities are only set to grow in the times to come.**

Here are the profiles of all the 30 awardees:

ABHIMANYU JALAN

Partner, Clyde & Co

A multi-specialist partner in Clyde & Co's Middle East corporate practice, Abhimanyu Jalan has successfully led numerous high-profile and complex mergers and acquisitions, restructurings, joint ventures and public-private partnerships (including in business sectors relating to power, healthcare, retail and telecommunications).

Experienced in all aspects of acquisition structuring, deal negotiation and documentation, Abhimanyu advises in relation to the full range of transnational acquisitions and other major corporate investment transactions. His clients include private equity entities, financial intermediaries, transnational corporations (both listed and unlisted), family offices and Governments.

Abhi is qualified to practice law in England, India and Ontario (Canada).

> ***It is fantastic of Legal Era to have this category of recognition for colleagues who have been indirectly contributing to India's growth from outside.***

AMIT KATARIA

Partner, Morrison Foerster

Amit Kataria has extensive experience advising on mergers and acquisitions, private equity investments, securities offerings, as well as a broad range of cross-border transactional and corporate advisory matters. He represents corporations, financial sponsors, and their portfolio companies in global mergers and acquisitions across a wide range of industries, including Technology, Financial Services, Biotech, Hospitality, Insurance, Logistics, Manufacturing, Pharmaceuticals, and Real Estate.

Amit focuses on advising strategic acquirers and financial investors in connection with cross-border transactions involving the United States of America, Europe, Latin America, China, South Korea, India, the rest of South Asia, and South-ast Asia.

Amit's clients appreciate his "take-no-prisoners approach to negotiations and drafting" and find "working with Amit a fantastic experience." Others say he is "very prompt in anticipating potential roadblocks in a transaction and finds innovative solutions to address such roadblocks."

Amit has practiced in New York, London, Hong Kong, and India.

ASHOK LALWANI

Partner & Head, Global India Practice, Baker McKenzie

Ashok Lalwani is the Head of Baker McKenzie's Global India practice and also heads the International Capital Markets practice in Asia Pacific. He has more than 25 years of experience handling Indian transactions – both inbound and outbound – for clients in various industries.

Ashok focuses his practice on public and private international securities offerings and cross-border mergers and acquisitions, including the representation of non-US based companies in transactions involving US federal securities laws. His practice also includes the representation of issuers and underwriters in public and private securities offerings in the US and abroad. Additionally, Ashok has more than 20 years of experience handling Indian transactions – both inbound and outbound – for clients in various industries.

Some of his notable work highlights includes:

- *Advised a Middle Eastern fund on investments into Paytm, Byju and Reliance Jio.*
- *Advising Videocon d2h on its US IPO through a SPAC.*
- *Advised Jain International Trading B.V. on its successful restructuring, implemented by way of an English law scheme of arrangement under Part 26 of the UK Companies Act 2006.*
- *Advised Kotak Mahindra Capital and Axis Capital on matters relating to US law in connection with the proposed IPO of Mahindra Logistics.*
- *Advised Jain Irrigation Systems Ltd. in connection with its debut USD 200 million global green high yield bond offering managed by Deutsche Bank and JP Morgan Barclays, Nomura and Rabobank as bookrunners.*
- *Advised Citigroup, Morgan Stanley, Kotak Mahindra, Axis Capital, Edelweiss Financial and Yes Bank in connection with initial public offering of Coffee Day Enterprises Limited (USD170million).*
- *Advised SBI Capital, Religare Capital Markets and Yes Bank as Book Running Lead Managers in the USD200 million Regulations rights offering by Kesoram Industries Limited.*
- *Advised an Indian issuer in connection with issuance of FCCBs.*
- *Advised Zee Telefilms Limited in connection with the offering of convertible bonds (Regulations).*
- *Advised ICICI Securities as lead manager on the IPO of Manaksia Ltd, which was listed on the National Stock Exchange and the Mumbai Stock Exchange.*
- *Advised the issuer, Dish TV Network Limited, in its sale of 11% stake to Apollo Partners through issue of GDRs.*
- *Advised several Indian companies in connection with acquisition of coal and other mines in Indonesia.*
- *Advised several multinational companies in connection with acquisitions in India.*

> ***"It has been wonderful seeing the development of work in India specially cross-border as a result of team work between Indian companies, Indian professionals, multinationals and international lawyers to bring India to where we are now"***

BISWAJIT CHATTERJEE

Partner, Hogan Lovells

Biswajit (Bis) Chatterjee is a corporate partner, and leads the US securities laws practice focused on India, SE Asia and Middle East. Biswajit divides his time between Singapore and Dubai.

Biswajit focuses on equity and debt capital markets, corporate finance, M&A and PE transactions in India, SE Asia and Middle East. He has worked across industries, including technology, fintech, energy, financial services, defense, infrastructure, real estate, retail and hospitality. He also supports Indian corporates and conglomerates growing and/or reorganizing their global operations on corporate commercial matters. Biswajit has also worked on a range of regulatory issues, including economic sanctions, government procurement, white collar investigations, corporate governance and regulatory issues.

DR. DANIEL SHARMA

Partner, DLA Piper

Daniel Sharma has extensive experience in advising clients in international disputes.

He regularly acts for private companies as well as governments, governmental institutions and international organizations in a variety of industry sectors, including infrastructure, power, aviation, oil and gas, automotive, chemicals, pharmaceuticals, financial services and manufacturing. Daniel has advised clients with regard to ad hoc and institutional arbitrations in English, French and German, and under different rules, including ICC, SIAC, DIS, CIETAC, UNCITRAL and ICSID. He regularly sits as an arbitrator. Daniel is also highly experienced in antitrust laws and represents clients in private antitrust litigation proceedings.
Daniel is the chair of the firm's global India Group.

Daniel is Rechtsanwalt admitted with Rechtsanwaltskammer Frankfurt am Main Solicitor of the Senior Courts of England and Wales.

> ***We have seen a significant change in the kind of work we do. While 20 years ago large part of the work was relating to JVs and JV disputes, today the work has become much more complicated - complex regulatory work, big ticket M&A, cross-border insolvencies, significant international dispute resolution and enforcement methods many of which are reported in media as well.***

> *India is a very important part of our strategy. But really, it just comes to one thing - ensuring we build relationships. We hold on to relationships. Treasure relationships. That is our key strategy.*

GAUTAM BHATTACHARYYA

Partner & Chair India Business Groiup, Reed Smith

Gautam Bhattacharyya specializes in international commercial arbitration and litigation in a broad number of areas. He is a member of Reed Smith's global board, its Executive Committee. He has been a partner in the firm since 2000 and is the former Managing Partner of Reed Smith's Singapore office. Gautam is also chair of our India Business Team.

Gautam has extensive experience of acting in international arbitrations under the rules of the International Chamber of Commerce (ICC), UNCITRAL, the London Court of International Arbitration (LCIA), the Singapore International Arbitration Centre (SIAC), the International Centre for Settlement of Investment Disputes (ICSID), the Arbitration Institute of the Stockholm Chamber of Commerce (SCC), the Swiss Chambers of Commerce, and other arbitration bodies. He has also conducted numerous litigations before the English courts, as well as cases involving the courts of many other jurisdictions. He was previously a visiting law lecturer at the University of Westminster.

Gautam is qualified as a solicitor in England & Wales in 1993 (after completing his solicitors' training contract in London between 1991-1993); he became a partner in Reed Smith LLP in 2000; from 2012-2015 he served as the founding managing partner of Reed Smith's Singapore office.

GAUTAM NARASIMHAN

Joint Managing Partner, Allen & Overy

Gautam Narasimhan is a banking partner and joint managing partner of Allen & Overy's Singapore office. His practice focuses on leveraged finance, structured finance and private equity in South and Southeast Asia, particularly India, Indonesia, Vietnam and Singapore.

He has advised many international banks, private equity funds and credit funds on numerous high-profile financings and structured transactions in the region, including some of the most significant acquisition financings on recent high value intra-Asia deals.

Gautam has been practising in Singapore for the last 14 years and worked in London and New York previously. He is qualified to practise in England, Singapore, New York and India.

JAI PATHAK

Partner, Gibson Dunn

Jai S. Pathak is a partner in the Singapore office of Gibson, Dunn & Crutcher LLP. He is a member of the firm's corporate department and its Mergers and Acquisitions Practice Group. Mr. Pathak established the Singapore office in 2008 and has served as its Partner-in-Charge until 2021. He has also served as a member of the firm's Executive Committee.

Mr. Pathak has extensive experience in cross-border mergers and acquisitions, takeovers, dispositions, privatizations, joint ventures, licensing, infrastructure development, as well as private equity and structured finance transactions. He has significant experience in the telecommunications, technology, banking, hospitality, oil/gas, pharmaceutical, FMCG and chemical industries. His clients have included governments, financial institutions, investment banks, multinational companies and U.S., European, and Asian companies. His practice has included projects in the United States, Europe, India, Southeast Asia, Latin America, Canada, Australia and China.

> ***One of the biggest challenges as far as Asian clients is concerned has been that we haven't been able to meet our clients physically as much as we would have liked to - and that has been a crucial element of the relationship with Asian clients more so.***

JAMIE BENSON

Director, Duane Morris

Jamie A. Benson is the head of Duane Morris and Selvam's U.S. Capital Markets practice, U.S. Venture Capital and India Practices. He has more than 20 years' experience and has advised on more than 100 securities offerings throughout the world with total proceeds of approximately US$22 billion. He is one of the leading international legal counsel advising on securities offerings by Indian issuers. He is currently based in Singapore, having previously worked in New York, Sydney and London.

Jamie's experience includes advising on: equity offerings (public offerings and private placements); high-yield, convertible and investment-grade bond offerings; debt private placements; SEC-registered equity and debt offerings; mergers and acquisitions of both U.S. and non-U.S. public companies; going private transactions; SEC reporting obligations; compliance with U.S. broker-dealer laws; general corporate law matters; commercial law matters; and FCPA matters. Jamie has worked on deals across industries.

Jamie has represented almost every major international and Indian investment bank. Jamie studied law at the University of Cambridge (Trinity College), where he was awarded a B.A. and an M.A. He received his Master of Laws from the University of Virginia. Jamie is admitted to practice law in New York, USA and Tasmania, Australia.

> ***I've been to India 80 times. But not been once in the last 2 years. So really looking forward to doing that by the end of the year. Capital markets is extremely busy at the moment. It's no secret that the LIC IPOs are going to hit the market soon and that is keeping us extremely busy.***

KAMAL SHAH

Senior Partner, Stephenson Harwood

Kamal Shah is a Senior Partner in the Dispute Resolution Group, as well as the head of the India and Africa groups at Stephenson Harwood. He is based out of the London office, but travels regularly to India and Africa. Kamal specializes in International Arbitration, Commercial Litigation, fraud and asset tracing. He advises a diverse mix of Corporations, Banks, Governments, and Wealthy Families and Individuals, in complex disputes in India, many of them crossing several jurisdictions. Kamal is a member of the LCIA Court, as well as the president of the LCIA's African Users' Council.

Kamal Shah acts for governments, government entities, banks, private corporations and high net worth individuals in a range of matters including those relating to projects and infrastructure, joint ventures, banking and finance, shareholder arrangements, energy and a range of schemes commonly used to defraud individuals and corporations.

> ***"On behalf of my team in China, Middle East, the Far East and London, I thank Legal Era for changing with the times and organizing such a wonderful ceremony.***

KARTHIK KUMAR

Partner, Jones Day

Karthik Kumar is an experienced project development, acquisition, and finance lawyer. He has advised on high-profile renewable energy and infrastructure projects in the Asia-Pacific region since 2003, including on the development, financing, sale, and acquisition of projects in India, Bangladesh, Indonesia, Sri Lanka, Singapore, Taiwan, Vietnam, Thailand, Myanmar, Philippines, China, and Australia.

Karthik acts for a wide variety of clients such as developers, sponsors, borrowers, and financial institutions, including banks and multilateral lending institutions. Karthik has a strong focus on the renewable energy sector with extensive experience in solar, onshore and offshore wind, biomass, and waste-to-energy projects across the region.

Karthik is highly regarded in the market for his in-depth regulatory knowledge and significant transactional experience across Asia-Pacific.

> ***"It has been exciting to watch the energy transition in India, the phenomenal growth in renewable energy deals, ESG issues, green and sustainable financing - all these in my view are just the tip of the iceberg - as India heads in the right direction towards a green future.***

LAURENCE LIEBERMAN

Partner, Taylor Wessing

Laurence Lieberman specializes in litigation, international arbitration, and regulatory and corporate investigations. His sectors of expertise are life sciences and financial services. Laurence is also the Head of the India group. He regularly travels to India, and acts for Indian multinationals across a range of sectors. In life sciences, Laurence represents UK and international pharmaceutical, biotech, and other life sciences companies on commercial disputes. This includes disputes concerning royalty payments and licencing, joint venture and collaboration agreements, marketing approvals and market entry for medicines, distribution and supply of products, and regulatory and compliance investigations and breaches.

In financial services, Laurence advises clients on disputes, investigations and enforcement actions. He has particular expertise in private banking and wealth management, structured products and derivatives, securitizations and financial frauds. Laurence acts for a range of domestic and international banks and other financial institutions, and also represents senior executives in financial institutions involved in high profile, often transatlantic, regulatory investigations.

LORD PETER GOLDSMITH QC

Debevoise & Plimpton LLP

Lord (Peter) Goldsmith QC, PC, is London Co-Managing Partner and Chair of European and Asian Litigation.

Lord Goldsmith acts for a variety of clients, alongside his role as chair of the firm's European and Asian litigation practices, in arbitration and litigation in the UK and other countries. He is a QC and appears regularly in court as well as in arbitration.

He has served as the UK's Attorney General from 2001-2007, prior to which he was in private practice as one of the leading barristers in London.

His significant work includes leading cases on auditors' liability; insurance and takeover law; banking law; company law; insolvency litigation; revenue cases; public law and public international law; and arbitration. He has a double first class honors from Cambridge University and a Masters from University College London.

"Pleasure and honor. These are excellent awards. To my mind, there are two reasons why these awards are so valuable. One, in these desperate times of COVID, these awards are really filling the void. We are getting recognized. And two, it is not just getting together but also coming closer together. We have talked about integration and closer cooperation.

NIPUN GUPTA

Partner & Joint Leader of India Strategy Group, Bird & Bird LLP

Nipun advises Bird & Bird on their international strategy for India. Her focus is international M & A, particularly cross border matters and emerging markets. Before joining the team at Bird & Bird, she was a partner at a US headquartered international law firm, where she was recognized by Chambers Global as 'a driving force behind the India practice'. Prior to that, she was the Global Head of Legal at Ispat International which has since rebranded as Arcelor Mittal to become the world's largest steel manufacturing group.

In 2001, she was recognized as one of the 'Hot 100' lawyers in the UK, and received the 2001 International Professional Award EFBWO.

In 2006 she received the prestigious Law Day award from the Indian Prime Minister recognizing her outstanding contributions in the field of law as a 'role model for women lawyers in India and abroad'.

"Thank you Legal Era for providing an exceptional platform. It is a privilege to receive this award. Bird & Bird has continued to strive for legal excellence at all times and functions as one Firm despite the challenges that can occur of working from home across multiple locations. A great team effort across offices particularly for M & A and disputes and brilliant clients especially in Life Sciences and Tech have made for a very interesting 12 months. Clients have been very active given the unique challenges that the last 24 months have presented to many. The team have consistently responded to the opportunity to be nimble footed and innovative to respond to getting deals across the line

NISH SHETTY

Partner, Clifford Chance

Clifford Chance Asia is a Formal Law Alliance in Singapore between Clifford Chance Pte Ltd and Cavanagh Law LLP. Nish Shetty leads the Litigation & Dispute Resolution practice in Asia Pacific.

He specializes in dispute resolution, with a particular focus on international arbitration, restructuring & insolvency and regulatory work. He regularly advises on complex cross-jurisdictional disputes including arbitrations and is widel y recognized as a leader in the field of dispute resolution in the region.

Nish is on the panel of arbitrators of most of the key arbitral institutions in the world.

Nish has an LLB from the National University of Singapore. He has been admitted as a Solicitor in Singapore and in England and Wales.

RAJA BOSE

Partner, K&L Gates

Raja Bose leads the firm's commercial disputes and international arbitration practice in Asia and has more than 20 years of experience in international dispute resolution and has worked in both London and Singapore. He is qualified both as an Advocate and Solicitor of the Supreme Court of Singapore as well as admitted as a Solicitor of England and Wales.

He is also a qualified arbitrator and is a fellow of both the Chartered Institute of Arbitrators of the UK as well as of the Singapore Institute of Arbitrators. Raja is on the panel of arbitrators of a number of arbitration institutions including the SIAC, KLRCA, ICA, and HKIAC.

Whilst his practice focuses on international commercial dispute resolution with an emphasis on international arbitration, he also has considerable experience supervising, coordinating, and managing complex court-based litigation in a wide number of countries in the Middle East, Africa, and the Asia-Pacific region including South Asia, Indo-China, and South-East Asia. Raja has also been involved in a number of high profile investor/state disputes and investment treaty arbitrations including defending the Governments of India and Bangladesh as well as pursuing actions on behalf of foreign investors against the Governments of Thailand, Egypt, and Sri Lanka.

ROBERT FRIEDMAN

Partner, Sheppard Mullin

Robert Friedman is a partner and Practice Group Leader of the Business Trial Practice Group and is based in the firm's New York office. He is also head of the firm's South Asia team and a member of the White Collar and International Arbitration groups. Robert focuses on business and corporate litigation matters and internal investigations. He has tried over 70 cases and regularly represents financial institutions, technology companies, media companies and litigation trustees in significant business disputes, including those involving trade secrets, software theft, non-compete, securities and license agreements. He has achieved successful outcomes in the major international arbitral forums and has led numerous internal investigations for clients in all industries.

Prior to entering private practice, Robert was a Senior Trial Attorney in the Homicide Bureau of the Kings County District Attorney's Office.

RALPH C VOLTMER JR.

Partner, Covington & Burling LLP

Ralph Voltmer, Jr., a partner in the firm's corporate group, advises both U.S. and foreign clients in cross-border transactions such as mergers and acquisitions, joint ventures, strategic alliances, and financings (whether debt or equity). Ralph has represented clients on a variety of transactions in Europe, Latin America, and Asia, and he is the chair of the firm's India Practice.

Some of his notable work highlights includes :

- *Representing Reliance Industries Limited in connection with the combination of its digital music business, JioMusic, with Saavn Media, a leading global music app in connection with which Reliance made an upfront investment of U.S. $124 million and made a commitment for an additional equity investment of U.S. $80 million, all of which resulted in Reliance having a controlling interest in the combined entity, which is valued in excess of U.S. $1 billion.*
- *Representing Piramal Critical Care, Inc., an indirect wholly-owned subsidiary of Piramal Enterprises Limited, on its acquisition of an Abbreviated New Drug Application relating to Levothyroxine Sodium for Injection and related assets from Fera Pharmaceuticals, LLC, Fera Development, LLC, and Oakwood Laboratories, LLC, and the negotiation of a Manufacturing Supply Agreement with Oakwood Laboratories, LLC.*
- *Representing PEL Pharma Inc., a wholly-owned subsidiary of Piramal Enterprises Limited, in the acquisition of Ash Stevens, Inc, for an upfront cash payment of US $42,950,000, plus an earnout of up to US $10,000,000.*
- *Representing Cisco Systems in connection with the acquisition of 47Line Technologies, Inc. d/b/a Cmpute.IO, a Delaware corporation together with its wholly-owned Indian subsidiary.*
- *Representing Mindtree Ltd. in connection with its acquisitions of Discoverture Solutions and Keste LLC.*
- *Representing the Walt Disney Company in its acquisition of India's UTV Software Communications Limited, an integrated media and entertainment company involved in broadcasting, motion pictures, games content, interactive and television content.*
- *Representing Reliance Life Sciences in a $35 million investment in an MPM BioVentures Fund.*
- *Representing Reliance Industries Limited in connection with its $30 million investment in Studio 8, LLC.*
- *Representing Football Sports Development on the formation of the Indian Super League (ISL).*
- *Representing Famy Care Limited in the $750 million sale of its women's health business to Mylan Laboratories Limited.*

> ***"I'm grateful for the opportunity to Chair the India Practice at Covington and the friends I have among India colleagues who have extended tremendous support and encouragement.***

RYO KOTOURA

Partner & Head India Practice, Anderson Mori & Tomotsune

Ryo Kotoura is a partner and head of India practice team at the Japanese law firm Anderson Mori & Tomotsune. He is working primarily in the field of Japan-India related matters. With his experience working at an Indian law firm, he regularly advises on domestic clients advancing to South Asian Countries (India, Bangladesh and Pakistan. In particular, India) (establishment and operation of local subsidiaries, branch and liaison offices), joint ventures and acquisition of local companies (including those acquired through tender offer), research of regulations and support for filings, support for conclusion of distributorship agreements and agency agreements, employment management, management of intellectual property rights, litigation, as well as on other legal issues that Japanese companies often face in South Asian Countries (in particular, India).

He has abundant experience of advising Japanese companies disputing with the companies in South Asian countries (in particular, India) by international arbitration in a third country, those litigation in those countries etc. He also advises domestic clients in Japan on M&A, corporate restructuring and internal compliance matters. He has abundant experience of internal investigation and outside investigation through a third-party committee.

> ***I am an India-Japan expert looking at matters of our Japanese companies making investments in Indian and also Indian companies making investments in Japan.***

SHERINA PETIT

Partner & Head of India Practice, Norton Rose Fulbright,LLP

Sherina Petit is a partner in the London office of Norton Rose Fulbright, leading the international arbitration practice across Asia, Europe and Middle East and the firm's India practice globally. Sherina has significant experience in international commercial arbitration, investor state disputes resolution, alternative dispute resolutions (ADR) and litigation. In addition to acting as counsel, she regularly sits as an arbitrator.

Sherina has a wide range of experience in all key aspects of international arbitration across a broad range of industries, including: energy; construction; oil and gas; trade; transport; pharmaceuticals; commodities; finance; and technology. She represents international clients in a wide variety of commercial and investment arbitration proceedings, including those before the London Court of International Arbitration (LCIA), the International Chamber of Commerce (ICC), the United Nations Commission on International Trade Law (UNCITRAL), the Singapore International Arbitration Centre (SIAC), as well as in ad hoc proceedings.

Sherina has vast international experience, having practised across multiple jurisdictions. She qualified as an Advocate in India whilst working at a leading law firm in Mumbai (now non-practising).

> ***My superpower is enjoying what I do everyday. Yes, the last 2 years were challenging but it was rewarding too. I never thought I would see a pandemic in my lifetime. Never thought that we'll conduct online hearings or work virtually. But we did it! We lived in a whole new world!***

SUNIL KAKKAD

Partner, Gowling WLG

Sunil Kakkad heads the Firm's Corporate Team. He has over 30 years' experience advising UK and foreign companies, financial institutions and high net worth individuals and families on public and private mergers and acquisitions (both domestic and cross-border), capital markets transactions (including IPOs and secondary issues on the Main Market and AIM), private equity investments, joint ventures and strategic alliances.

As joint head of the Firm's India Group, Sunil also advises Indian companies, financial institutions and high net worth individuals and families on a wide range of cross-border transactions, including mergers, acquisitions, disposals and capital raising in the UK and elsewhere in Europe.

Sunil's clients include Main Market-listed clients, including Wilmington plc and Hardy Oil & Gas plc, AIM-listed clients, such as Codemasters Group Holdings plc and The Stanley Gibbons Group plc, and other listed and large private companies in the UK and abroad, including Greenko Group plc and Mytrah Energy Limited.

"My journey with India started more than 20 years ago. It has come with a lot of surprise but also with a lot of innovation and solutions that nowhere else in the world can provide.

TAEKO SUZUKI

Partner & Head India Desk, Nishimura & Asahi

Taeko Suzuki is a well known Japanese lawyer who heads India Desk of Nishimura & Asahi. Taeko advises Japanese corporations investing into and doing business in India, with a special focus on dispute resolution (litigation and arbitration) and regulatory work (criminal and competition related matters) in India. She also handles jurisdictions such as Sri Lanka, Pakistan, UAE, Bangladesh, Nepal, Maldives, and other countries in South Asia, the Middle East and Africa.

She represented major Cases in 2021 -
Monstarlab Holdings, Inc. - Acquisition of Dubai's ECAP DMCC

Mitsubishi Heavy Industries Ltd. - Sale of machine tool business to Nidec Corporation etc.

TALAT ANSARI

Partner, Seyfarth Shaw LLP

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

Talat is a member of the Litigation practice group and co-chair of the International Dispute Resolution Group. He also advises on corporate and commercial transactions (M&A, finance, trade regulations), infrastructure projects, and international litigation (American & Indian law) and arbitration. He also advises US 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 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.

Talat offers his clients more than four decades of experience representing India-based industrial, servicing and trading companies doing business in the US, including several large Indian conglomerate businesses with international reach and particularly extensive US business objectives and holdings. Talat also serves as trusted advisor on matters pertaining to business law, banking, direct and indirect taxes, foreign exchange regulations and foreign direct investment issues.

In addition, Talat advises a myriad of well-known and emerging US industrial and financial clients on Indian law.

> ***"It's been a difficult time during the pandemic specially in my area because I'm a litigator and I find it tough to do depositions and examine legislations live through TV and other media it's not the same as doing it directly.***

ULRICH (ULI) BÄUMER

Partner, Osborne Clarke

RA Ulrich Bäumer, LL.M. (Washington, DC), Attorney-at-law (N.Y), is a partner of the international law firm Osborne Clarke in Cologne. He advises the clients of the firm mainly in the areas information technology and (offshore) outsourcing, as well as complex licensing issues (inter alia ERP, XaaS, Cloud, etc). He drafts and negotiates complex international IT project (especially outsourcing and licensing) contracts and assists the technology clients of the firm in M&A transactions. He also advises in all other aspects of technology, data protection and licensing law. Clients of the firm recommend him as a lawyer who "gets the deal done" (the Lawyer in Germany (JUVE), 2020). He also advises the clients in international law and in establishing and expanding their business abroad, especially to India.

He drafts and negotiates complex international IT projects (especially outsourcing and licensing), contracts, and assists technology clients of the firm in M&A transactions. He also advises in all other aspects of technology, data protection and licensing law. Ulrich has successfully worked on and finalized 400 + global IT projects in the last 22 years.

"The Rule of Law in India is such a huge asset which will make India shine even brighter for the next 100 years. Most of my portfolio is also in India. I can only hope I get to travel to India. I miss India!

VIKRAM NAIR

Partner, Rajah & Tann

Vikram Nair is a dispute resolution lawyer specializing in commercial and corporate litigation in Singapore courts and international arbitration. He is experienced in handling complex international disputes based or seated in Singapore, where assets or parties are located in different jurisdictions.

The disputes he has handled over the years span a wide range of sectors including construction, infrastructure, mining, manufacturing, commodities, logistics, healthcare, pharmaceuticals, banking, structured products and finance/ lending agreements. These disputes typically involve assets or parties in a range of jurisdictions, including India, Indonesia, Thailand, Malaysia, Philippines, Dubai, the US, UK and the EU.

"India is a huge market but it will be nice if India opened up a bit more on regulations and laws for investments. But conversely, India is also a big market exporting talent and expertise out

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WHY ENVIRONMENTAL, SOCIAL, AND (CORPORATE) GOVERNANCE

MATTERS EVEN MORE FOR ORGANIZATIONS IN EMERGING MARKETS

Organizations are now not only responsible for boosting their shareholder value but are also responsible for the wellbeing of their external stakeholders in order to be successful in competitive global markets

A. Relevance of Environmental, Social, and (Corporate) Governance in Emerging Markets

Emerging markets are often inherently unpredictable and volatile in nature not only from a geopolitical, macroeconomic, and legal compliance perspective but also in view of quickly unfolding societal shifts, repercussions from climate change and poverty. Often only those organizations that can establish robust and practical relevant compliance and corporate governance frameworks within an agile organizational setup are able to manage diverse risk factors such as legal and compliance risk, pervasive regulatory changes and even security threats and at the same time prevent corruption, mismanagement, and poor decision-making, among others. Therefore, when navigating in riskier jurisdictions, it is particularly important for stakeholders to build resilient organizations based on strong fundamentals such as ethical principles, compliant and transparent decision-making processes, deep anchored corporate values, and culture based on sustainable governance frameworks which help organizations to optimally weather perilous situations and threatening events.

With climate change increasingly impacting vulnerable developing countries, private sector companies are now more than ever important societal pillars that are contributing to their external stakeholders' wellbeing in relevant target markets by promoting environmental projects and initiating social projects which are positively impacting the lives of the local population. Of course, despite these difficulties, emerging economies are extremely attractive for risk taking entrepreneurs looking for unsaturated new sales markets with an abundance of promising business opportunities that have substantial socioeconomic growth perspectives.

In addition, there have been numerous corporate scandals in the recent past (not necessarily as a result of the COVID-19 pandemic) both in emerging and developed markets – which have pointed to the growing role of corporate governance in preventing fraud and ensuring the overall well-being of businesses.

Good corporate governance and robust compliance frameworks are of overriding importance while designing effective and sustainable organizations. The OECD in its policy recommendation paper "G20/OECD Principles of Corporate Governance"[1] defined the purpose of corporate governance as a tool that helps build an environment of trust, transparency, and accountability necessary for fostering long-term investment, financial stability and business integrity, thereby supporting stronger growth and more inclusive societies. The OECD provides in its definition and paper an excellent summary of some key principles and values which are worth considering while designing resilient organizations.

Corporate Governance principles and related legal frameworks are often laid down in regulated sectors such as in companies' laws, banking laws, capital market laws and insurance laws just to mention a few of them. Such regulations generally give a good understanding of the applicable corporate governance standards and regulatory compliance culture of a respective jurisdiction.

B. Key Good Governance Principles

So, what are the good governance key principles worth being considered by stakeholders while designing efficient organizations in developing economies? The answer certainly depends on various relevant factors such as the type of organization for example is it a publicly listed or privately held company, is the company a SME or a sizable conglomerate and/or family business and in which business sector and industry is the corporation operating in noting that undertakings in highly regulated sectors often face

1 https://www.oecd.org/daf/ca/Corporate-Governance-Principles-ENG.pdf;

higher governmental scrutiny. Finally, it also depends on the respective inherent jurisdictional risk profile.

Some of the key fundamentals which ideally should define effective management and decision-making processes of an organization can be summarized as rule of law, moral integrity, transparency, participation, responsibility and accountability, effectiveness, and efficiency as well as what sustainable societal and environmental impact a company is able to create for its external stakeholders often referred to as Environmental, Social, and (Corporate) Governance ("ESG"). A lot of times it is only those internalized and deeply-rooted fundamentals in the organizational system and corporate culture which can help to manage challenging environments while the outside world is in turmoil.

C. A Quick Due Diligence Guide and Corporate Governance Health Check

Below are some corporate governance risks and useful questions which can serve as a preliminary due diligence process to understand whether your organization maintains an appropriate governance framework or if there are some gaps which need to be addressed.

1. Lack of oversight and management control leading to poor organizational performance.
   a. Which management control and oversight structures does your Organization have in place?
   b. Who is responsible for reviewing, adjusting, and improving those structures?
2. Lack of checks & balances causing compliance and legal violations.
   a. What kind of checks & balances system does your Organization have in place?
   b. Who is responsible for its implementation/monitoring?
3. Lack of efficient communication leading to poor decisions and triggering risk and liabilities.
   a. What are your Organizational communication channels and participation between the Board, the CEO, middle management, and employees?
   b. Which function(s) in your Organization is maintaining and improving those channels?
4. Lack of adherence/compliance with (newly) issued regulations during COVID-19.
   a. What is your organizational compliance structure?
   b. Which function(s) in your Organization is monitoring, implementing, and improving your compliance structure?

D. Business Insider Series

In light of these challenging times, Agema Analysts (Agema Analysts) and ALN Kenya | Anjarwalla&Khanna (A&K), in conjunction with Capital Club East Africa have developed the Business Insider Series which aims to delve into some of the arising corporate governance issues. Through a series of seminars, Agema Analysts and ALN Kenya intend to provide businesses with a basic understanding of how to adapt their corporate governance frameworks with a view to ensuring

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Investment | Risk Advisors

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Adopting and incorporating sound ESG standards are indispensable in today's quickly evolving world which appears to have been turned upside down by a generational COVID-19 pandemic threat and an ever-growing climate change that is not only challenging societal value systems and fundamental orders of countries but also the very livelihood of people.

sustainability. The first seminar (Developing Resilient Corporate Governance Frameworks for Challenging Times) took place on 25 March 2020. The presenters were Gregor Pannike (Managing Partner, Agema Analysts) and Rosa Nduati-Mutero (Partner, ALN Kenya).

E. Conclusion

Adopting and incorporating sound ESG standards are indispensable in today's quickly evolving world which appears to have been turned upside down by a generational COVID-19 pandemic threat and an ever-growing climate change that is not only challenging societal value systems and fundamental orders of countries but also the very livelihood of people. Organizations are now not only responsible for boosting their shareholder value but are also responsible for the wellbeing of their external stakeholders in order to be successful in competitive global markets. Good corporate governance ensures corporate success and economic growth and at the same time, maintains investors' confidence, as a result of which, a company can raise capital efficiently and effectively and therefore lower the capital cost due to reduced risk premiums. Optimal governance frameworks also minimize wastage, corruption, risks, and mismanagement and hence reduce liability and boost brand equity formation and development, which are essential in a world that is heavily influenced and judged by the powerful multimedia sector and global dissemination of public opinions.

F. How can we help your organization?

We assist many organizations in developing and customising effective Environmental, Social, and Corporate Governance frameworks in various developed and emerging markets addressing many of the evolving challenges for private companies and would be delighted to discuss your organization's needs.

ABOUT THE AUTHOR

Author: **Gregor Pannike**
Designation: *Managing Partner*

Gregor Pannike, LL.M., MBA (Attorney-at-law | Rechtsanwalt) founder and managing director of Agema Analysts advises on Institutional & Corporate Risk and Political Risk & Intelligence Analysis. Gregor worked for the German Federal Foreign Office in the Embassy in Sana'a, Yemen and later on he worked as an attorney-at-law in private practice within the Middle East and Africa. Before founding Agema Analysts, Gregor worked as a general counsel for a reputable family conglomerate in the UAE for 8 years. He has more than 15+ years of profound advisory experience in the field of legal structuring, investments and market entry, corporate and commercial transactions as well as political and economic analysis within the Middle East and Africa. Gregor is admitted to the German bar association and to the courts of Germany.

Author: **Rosa Nduati-Mutero**
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Rosa is a Partner in the Corporate department. She advises clients on capital markets transactions, merger and acquisitions, commercial, regulatory and compliance issues. She also specializes in corporate governance and employment law. Rosa consistently handles significant cross-border transactions and has acted on most of the major consolidation deals in the region, including Equity Group on its acquisition of 79% of the share capital of ProCredit Bank in DRC, Equity Group in the acquisition of 66.53% stake in Banque Commerciale Du Congo (BCDC), the oldest bank in DRC, Giro Commercial Bank on its sale of the entire issued share capital to I&M Holdings, Diamond Trust Bank in the acquisition of Habib Bank and Access Bank in connection with the acquisition of 100% of the shares of Transnational Bank.

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THAILAND

FORTHCOMING REGULATION TO REGULATE DIGITAL PLATFORM SERVICES

The main purpose of this Draft is to regulate the business of providing digital platform (the "Digital Platform Service") by establishing regime for notifications and certifications for such business operation, along with designating certain duties to be observed by the business operator providing such Digital Platform Service (the "Business Operator")

With the recent approval of the Cabinet on the Draft Royal Decree on the Supervision of Digital Platform Services Subject to Prior Notification (the "Draft Royal Decree"), providers of digital platform services are about to come under the new and potentially extensive regulations and supervisions of the Electronic Transaction Development Agency (the "ETDA").

1.Draft Royal Decree

The Draft Royal Decree was first announced by the ETDA for public hearing on 15 July 2021. After the internal review process within the Ministry of Digital Economy and Society, it was sent to and approved in principle by the Cabinet on 25 October 2021. Currently, it is under review of the Council of State, and would need to be forwarded to the Cabinet for final approval again before becoming effective. The Draft Royal Decree will be issued under the Electronic Transactions Act B.E. 2544 (2001) as amended, with the ETDA being the main regulator under this draft.

The main purpose of this Draft is to regulate the business of providing digital platform (the "Digital Platform Service") by establishing regime for notifications and certifications for such business operation, along with designating certain duties to be observed by the business operator providing such Digital Platform Service (the "**Business Operator**").

Please note that the content of the Draft Royal Decree as presented in this article is based on the latest draft version available to us, and as this Draft Royal Decree is still in the drafting process, it is subject to future change.

2. Applicability

There are two key aspects to consider regarding the scope of application of this Draft Royal Decree: the nature of the Digital Platform Service to be subject under this Draft Royal Decree, and its extraterritorial effect for Business Operator located outside Thailand.

The Draft Royal Decree will apply to the Digital Platform Service that is in the nature of an intermediary platform that provides space for business operators on the platform (the "**Business User**") and consumers to connect using computer network[1].

For the purpose of this Draft Royal Decree, the Business User only refers to individuals who offer products, services, or properties to the consumers in commercial or professional manner for the purpose relating to commerce, business, craftmanship, or profession, regardless of whether such Business Users are member to or hold accounts on that platform or not[2]. As such, this Draft Royal Decree would only be applicable to the Digital Platform Services that includes these Business Users in their scope of services, while other digital platforms which provide service exclusively to other kind of business users, such as business users that are company, would not be subject to this Draft Royal Decree.

On the aspect of the extraterritorial effect of this Draft Royal Decree, it is provided that the Draft Royal Decree shall be applicable to the Digital Platform Services intended to be provided to consumers inside Thailand, regardless of where the Business Operators are located.

1 Section 3 of the Draft Royal Decree
2 Ibid.

Business Operators located outside Thailand may be deemed as providing the Digital Platform Service intended for consumers inside Thailand if the services provided are within the nature of the prescribed characteristics, such as, all or part of the services are provided in Thai, or the payment is designated or can be designated to be in Thai Baht currency.[3]

The Business Operators located outside Thailand that are deemed as providing the Digital Platform Service intended for consumers inside Thailand are required to appoint their representatives residing inside Thailand with no limitation of liability relating to the provision of the Digital Platform Service under this Draft Royal Decree.[4]

3. Outline of Duties for the Business Operator

The most noticeable duty assigned to the Business Operator under this Draft Royal Decree is the duty to notify the ETDA prior to the commencement of its provision of the Digital Platform Service. Other duties include the duty of the Business Operator who provides the Digital Platform Service under certain prescribed characteristics to notify the platform users (i.e. including both Consumers and Business Users) of the prescribed information, specific duties to be designated to large or specific Business Operators, and the duty to notify the ETDA prior to cessation of its Digital Platform Service.

Firstly, prior to its business operation, the Business Operator must notify the ETDA of its intention to provide the Digital Platform Service. Afterward, the certificate of notification receival will be issued to the Business Operator within the date of notification receival and the Business Operator may start providing the Digital Platform Service. It may be worth noting that there is no licensing requirement for the Business Operator which requires specific approval from the ETDA, although the receival of notification may be revoked from the registry later if the notification is found to be incorrect or incomplete. In addition, certain Digital Platform Service may be exempted from this duty as prescribed by the Electronic Transactions Commission (the "**Commission**").[5]

Secondly, the ETDA has the power to prescribe the characteristics of the Digital Platform Service which must notify the platform users of certain prescribed terms and details. These might include the terms of service, criteria for listing or ranking products or services on the platform, access and usage of the data received from the provision of Digital Platform Service by the Business User, complaint channel and dispute resolution, etc.[6]

In addition, the ETDA, with the approval of the Commission, may prescribe specific duties for the Digital Platform Service deemed as large platform or having specific characteristics.[7]

Business Operators who intend to cease its business of the Digital Platform Service must notify the ETDA for no less than 60 days prior to the date of cessation of its business.[8]

3 Section 9 of the Draft Royal Decree
4 Section 10 of the Draft Royal Decree
5 Section 7, 8, and 12 of the Draft Royal Decree
6 Section 18 of the Draft Royal Decree
7 Section 19 of the Draft Royal Decree
8 Section 20 of the Draft Royal Decree

JIRAPONG SRIWAT
Partner

DR. APINYA SARNTIKASEM
Partner

NISHIMURA & ASAHI

PRUK CHAWEEKULRATH
Attorney Of Law

Violation of this Draft Royal Decree may result in the order to cease the provision of Digital Platform Service and the revocation of the violating Business Operators from the notification receival registry.[9] Moreover, the violating Business Operators may be liable to an imprisonment of up to one year or a fine of up to Baht 100,000 or both.[10]

Apart from these duties, it may be worth noting that, for the purpose of providing accommodation for the Business Operator in notifying the ETDA, this Draft Royal Decree also authorizes the ETDA to request to other state entities for the disclosure of or access to the data collected from the Business Operator by such state entities, either by law or on contractual terms.[11]

4. Effective Date

The Draft Royal Decree will become effective after 180 days from the date of publication in the Government Gazette. The Business Operators who provide Digital Platform Service prior to the effective date have 30 days to comply with the new regulations counting from the effective date and must make notification to the ETDA within these 30 days period.[12]

9 Section 24 of the Draft Royal Decree
10 Section 44 of the Electronic Transactions Act B.E. 2544 (2001) as amended
11 Section 16 of the Draft Royal Decree
12 Section 30 of the Draft Royal Decree

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2022: KEY GST TAKEAWAYS

GST-related proposals in the Budget pivot around rationalizing various statutory provisions to give full force to the existing return system and introducing new conditions for regulating Input Tax Credit ('ITC') to safeguard the interest of revenue

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Recognizing the GST regime as fully IT-driven and progressive, Finance Minister Nirmala Sitharaman proposed to meet the ongoing challenges in the coming year through striking a right balance between facilitation and enforcement for better compliance.

GST-related proposals in the Budget pivot around rationalizing various statutory provisions to give full force to the existing return system and introducing new conditions for regulating Input Tax Credit ('ITC') to safeguard the interest of revenue.

The key takeaways are as follows-

Rationalization of GST Return filing process

GST was introduced with the vision of three-step return filing process vide forms GSTR-1, GSTR-2 and GSTR-3 involving two-way communication between the supplier and the recipient vide GSTR-2A and GSTR-1A under Sections 37, 38 and 39. However, the said mechanism could never be implemented due to GSTN portal limitations. Now amendments have been proposed to be made to these sections to provide for the manner as well as conditions and restrictions for furnishing details of outward supplies, communication thereof to recipient, and furnishing of return while doing away with two-way communication. Further, Sections 42 and 43 providing for matching mechanism have been proposed to be omitted.

These amendments have been proposed to be carried out to give statutory force to the existing return system whereby the supplier furnishes details of outward supplies in form GSTR-1 which are communicated to the recipient in form GSTR-2B basis which the return is furnished in form GSTR-3B for payment of tax. At present, this system of return filing is made effective through various amendments in rules and portal functionalities, but the GST Acts still provides for the dormant matching mechanism, which was causing ambiguity.

New safeguards around taking ITC

A new clause (ba) is proposed to be inserted in Section 16(2) to provide that ITC with respect to a supply can be availed only if such credit has not been restricted in the details communicated to the taxpayer under Section 38. The newly substituted Section 38 proposes to place several restrictions on ITC of the recipient on account of non-compliance by the suppliers, such as default in payment of tax for prescribed period, difference of output tax between GSTR-1 and GSTR-3B beyond a threshold, difference between ITC availed in form GSTR-3B and that available in GSTR-2B beyond a threshold. There could be bonafide reasons for non-reconciliation of output tax in GSTR-3B with GSTR-1 and ITC in GSTR-3B with GSTR-2B. How the rules and portal functionalities would recognize such genuine differences is a big question. Also, the provision is silent for availment of ITC if the said defaults are made good by the supplier.

Further, clause (c) of Section 16 which provides for eligibility of ITC in the hands of the recipient based on payment of tax by the supplier to the government has been proposed to be amended. Constitutional validity of this provision was challenged before various high courts inter alia on the ground of absence of matching mechanism as envisaged under the law. This provision was subject to Sections 41 and 43A. Section 41 provided for provisional claim of ITC under matching mechanism which was never brought into force and Section 43A was referring to a new return system which never got notified. Now reference to Section 43A has been proposed to be omitted and Section 41 has been proposed to be substituted to provide for reversal of ITC along-with interest in case of non-payment of tax by the supplier. However, ITC can be re-availed upon payment by supplier, but interest will become a cost in the hands of the recipient. The interesting fact is that the Government would earn interest from the supplier for delayed payment of tax as well as from the recipient upon wrong availment and utilization of ITC.

Enhanced enforcement

Registration of errant supplier is proposed to be canceled upon non-furnishing of return beyond 3 months from due date if the supplier is operating under the composition scheme and upon non-furnishing of returns beyond prescribed period in case of other suppliers.

It is also proposed that GSTR-1 for current period cannot be furnished if GSTR-1 of any of previous tax periods has not been furnished. GSTR-3B would be allowed to be furnished only after furnishing GSTR-1 of the said period. This would ensure sequential filing of statements and returns and ensure better compliance.

The Union Budget reflects the Government's larger vision of enabling ITC through technology with a clear intent to curb the menace of fake invoicing. However, the new stringent conditions for taking ITC based on the overall compliance level of the vendor may affect the ease of doing business

Late fee is proposed to be made payable by E-commerce operators also in case of delayed filing of TCS return in form GSTR-8 under Section 52.

All types of refunds due to a person under Section 54 are proposed to be withheld or adjusted if such person has defaulted in furnishing any return or if any tax, interest or penalty is due from such person. As present, such restrictions are placed only in context of refund of unutilized ITC.

Trade Facilitation Measures

Timelines have been proposed to be extended up to 30th November of following financial year for availment of ITC, declaration of credit note, rectification of any omission or incorrect particulars in returns. At present, these are to be done in the September month return of the following financial year. It provides one more month to taxpayer to carry out such activities.

Amount lying in cash ledger is proposed to be made transferable from one GSTIN to another GSTIN of the same legal entity under various heads barring SGST and UTGST. At present, transfer is permissible from one head to another including CGST, IGST, SGST and UTGST but within the same GSTIN of a legal entity.

It has been proposed to provide retrospectively from 1st July 2017 that the interest under Section 50 shall be payable at the rate of 18% on wrongful availment of ITC only to the extent of utilization which is a welcome step. The taxpayers who wrongly

availed and utilized ITC can be divided into three categories, those who discharged interest at the rate of 18%, those who did at the rate of 24% and those who did not discharge any interest at all. This amendment would require payment of interest by all those taxpayers who were not paying any interest on the ground that Section 50 does not provide for payment of interest in such cases since the amendment is retrospective in nature. However, it is yet to be seen whether refund would be eligible for differential interest to the taxpayers who discharged interest at the rate of 24% either suo moto or upon insistence by the department.

No tax would be liable to be paid on liquor license fees and on supply of unintended waste generated during the production of fish meal, except fish oil retrospectively from 1st July 2017. However, the budget proposal clearly provides for no refund of tax which has already been collected.

To sum up, the Government seems to be ambitious and aspires to leave no stone unturned to prevent revenue loss despite admitting the fact that the GST revenues are buoyant despite the pandemic. The buyers would be in dire straits for non-compliances by their vendors. The budget has proposed only a few business-friendly amendments whereas the taxpayers were hoping for more in the difficult times.

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FEAR OR CHEER?
RUNNING THE LAST MILE ON
LABOR LAW
CONSOLIDATION
IN A PANDEMIC WORLD

Legal Era Discusses the Future of India's Labor Law Landscape with Legal Experts Across Industries

-by Sneha Rai

Unless we live under a rock, we all know about the ongoing labor law consolidation!

Yes, the four Labor Codes - the Code on Wages, Industrial Relations Code, Social Security Code and the Occupational Safety, Health and Working Conditions Code - are set to replace 29 labor laws.

All the labor codes have been enacted. A notification on their effective date is now awaited. The Central Government has also issued draft rules under Labor Codes that are in the near finalization stage. Meanwhile, the State Governments have been urged to speed up drafting and finalizing their state-specific rules under these Labor Codes. This is being done to ensure that the 4 Labor Codes are implemented across all states and union territories simultaneously. Many state governments have already published draft rules for consideration.

MANOJ RAJENDRAN
Associate General Counsel (Labor & Employment), Amazon

All the same, the question of preparedness is interesting to address given the potentially serious consequences of failure to adhere to these provisions. As with any change, there are concerns regarding the ramifications and definitions of many of the provisions. Let's hear what the experts - both from the industry and the legal fraternity - have to say about all this. They share their views exclusively with Legal Era!

Understanding the background, intentions, and acceleration of the Labor Codes – Wages, Industrial Relations, Social Security and Occupational Safety, and Health and Working Conditions

Manoj Rajendran, Associate General Counsel (Labor & Employment), Amazon explains, "India being a labor-intensive country with a history of archaic and complex labor legislations, there have been countless interpretation and implementation issues. Onerous labor compliances along with inadequate legal sanctions have been a key enforcement concern. It has led to the **need of simplifying and streamlining complex legislation, improve work environments, and augment employment growth – particularly for foreign investors.** The latter consider the Indian labor law framework a hindrance to their business and investments.

Hence, the consolidation of the laws was **a welcome step from the government** with the intent to boost business operations and align with modern best labor practices, while simultaneously addressing the dynamic landscape of our economy."

Vikram Shroff, Head, HR Laws (Employment & Labor), Nishith Desai Associates opines, "Our labor laws are several decades behind the times. It's about time they're reformed – and these new codes help simplify and streamline the current maze, taking us into a more exciting post-COVID era."

However, Mr. Shroff urges, **"Lawmakers could have gone beyond consolidation to significantly reform the labor laws to be relevant, flexible, and support the changing work ecosystems in different industry sectors, while promoting employment generation and protecting workers."**

Diving into the Overarching Impacts, Trends, & Perspectives of the Wage Code

Manoj Rajendran, Associate General Counsel (Labor & Employment), Amazon highlights a couple of features. "To ensure compensation packages were attractive, from a tax and take-home perspective, there were higher percentages of allowances in the remuneration structure that were excluded from wages. The new definition of "wages" under COW and COSS (Code on Social Security 2020) is likely to lead to **fluctuations in PF/ ESI contributions.**

VIKRAM SHROFF
Head, HR Laws (Employment & Labor), Nishith Desai Associates

Now, the specific allowances are capped at 50%, implying that PF contributions would be required to be at least 50% of the total remuneration. Given this, **organizations will need to recompute remuneration and salary components. They will also need to consider the excluded allowances that aren't counted towards wages – to meet the minimum threshold.** The new definition of 'wages' is also intended to be a benchmark for computing other pay-outs as well. Consequently, employees are bound to be impacted by lower take-home salaries and increased social security benefits."

Anubhav Kapoor, Director of Legal Affairs, Ford, India, highlights, "To keep provident fund and income tax outflow low, employers will be splitting wages into numerous allowances. According to the new code, half the gross pay of an employee would be basic wages because allowances are capped at 50%. Since wage now has to comprise at least 50% of the total salary, basic pay will be reduced significantly. That will affect other components like PF and gratuity. **Employees may be taking home a lot less by way of salaries but employers will be forced to contribute a lot more as well."**

Vikram Shroff, Head, HR Laws (Employment & Labor), Nishith Desai Associates explains and cautions, "While the new wage definition contain several exclusions, it seeks to ensure that 'wages' for the purposes of the codes are at least half the total remuneration paid to each employee. A certain amount of remuneration-in-kind is also included as wages. Depending on the extent of structural changes adopted by various employers to their compensation break-up, it could lead to adverse and unintended take-home pay reductions. Hopefully, it is only a matter of time until progressive employers can manage their financial liability without affecting their employees' interest negatively."

Fear or Elation: What's the consensus for a post-pandemic world?

Manoj Rajendran, Associate General Counsel (Labour & Employment), Amazon opines, "As previously mentioned, even though take-home salaries will be negatively impacted, there is also the benefit of better social security and higher tax benefits. Hence, **I don't believe these new codes will promote contractualization. On the contrary, new provisions recognize fixed-term employment at par with full-time employees.**

Informalization isn't suggested as an alternative to regular employment but simply recognizes the need for social security for alternate engagement models. The COSS also requires aggregators engaging gig workers and/platform workers to make a turnover-based contribution towards their social security needs.

Additionally, the Code on Industrial Relations 2020 has raised the threshold for retrenchment from 100 to 300. But it has also made it costlier to retrench. This is due to the requirement of an additional contribution equal to 15 days' wages of the worker into the workers' reskilling fund (in addition to retrenchment compensation). Hence, **I believe the overall benefits of the codes outweigh the negatives for employees.**

VINEET VIJ
Global General Counsel
Tech Mahindra

Further, the pandemic has raised numerous concerns around business continuity and the need for socially responsive approaches. I believe the codes are expected to be a progressive step towards ensuring the provision of adequate social security benefits, in organized and unorganized sectors."

Vineet Vij, Group General Counsel, Tech Mahindra affirms, **"This is a positive step aimed at transitioning towards an inclusive and practical working ecosystems by striking the right balance between the interests of employees and employers.** While there is some impact on take-home salaries, right to strike, etc., the long-term benefits far outweigh the short-term effects and will lead to harmonization between employers and employees within a transparent, sociable, and cohesive environment. It also allows employers flexibility about the composition of their workforce, helping freelancers, gig and platform workers with the same benefits as other employees.

Anubhav Kapoor, Director of Legal Affairs, Ford, India shares a mixed response. "The industrial relations code applies to all establishments irrespective of the number of employees or the sector it aligns to. **Labor unions think the threshold increase will allow employers to hire and fire as many as 300 workers as per their will. The IR code is thus seen as heavily skewed in favor of employers. And by increasing the strike notice period to 60 days, the negotiating power of unions has been diminished – making it difficult for workers to collectively agitate against wrongful practices. They have also noted that the right to strike has not been extended to the unorganized sector. All these factors create scepticism about the codes among employees.**

ANUBHAV KAPOOR
Director of Legal Affairs,
Ford, India

On the other hand, for the first time, all workers will receive a minimum wage via the wages code. With the introduction of floor wages assigned by the central government. This also includes new schemes for migrant workers, provident funds and social security for gig and platform workers, while women will also be able to work in various kinds of businesses and work night shifts as well. Overall, it's a mixed bag of reactions."

Vikram Shroff, Head, HR Laws (Employment & Labor), Nishith Desai Associates shares a pragmatic take, "There will always be a mismatch of expectations as these labor laws are viewed through different lenses. It will be impossible to align to everyone's needs. However, the government has tried to augment the adverse effects of retrenchment and worker vulnerability by allocating a certain amount to a reskilling fund as AI technology makes several baseline workers redundant. Leading trade unions see many of these reforms in negatively, and active participation from them along with our government will be critical to make these codes a success and promote a mutually beneficial and healthy employer-employee working relationship.

As an employment lawyer, I am truly excited for the new labor codes and hope that their impact makes India a favorable business destination and promotes better workplace relations. Albeit, there is a hint of concern and fear of the unknown, and many

questions will only be answered once the labor codes are implemented."

The Legal Ramification of Interlinked Laws, Expected Challenges and Recommendations

Manoj Rajendran, Associate General Counsel (Labor & Employment), Amazon expresses, **"A major area of concern is the inconsistencies between the provisions of the Code on Occupational Safety, Health, and Working Conditions (OSH Code), the draft OSH Rules 2020, and the extant state shops and establishment laws (S&E Laws) on matters like working hours, spread over, overtime, etc.**

Additionally, there are some lacunae in drafting these provisions and the Labor Codes and the draft Central Rules. They add uncertainty to the legislature and government's intent. For example, for states like Karnataka and Maharashtra, the normal working hours a day are 9, whereas the same is 8 hours under the OSH Code. Although the government will clarify these confusions closer to the implementation of the Labor Codes, I believe organizations can choose to adopt the more beneficial position for employees in such matters."

Mr. Rajendran foresees that "Considering the Labor Codes seek to completely reform the labor law landscape, challenges are par for the course. However, **the delay in enforcement has given organizations time to analyze and prepare for implementation.** It is also expected that the government will soon provide clarity of issues; that it will formally allow employers a reasonable transition before final implementation. As a result, **"The industries' recommendation has been mostly to clarify the position vis-à-vis operational inconsistencies between the Labour Codes and rules thereunder, and the S&E laws, etc."**

Vikram Shroff, Head, HR Laws (Employment & Labor), Nishith Desai Associates adds, "While there is healthy competition between Indian states to attract investments, they need to be cognizant of employers who have offices and factories in multiple locations. If the rules are rationalized and consistent across the country it will make it easier for employers to expand their business and thrive in this competitive world." He recommends, "Organizations should use this time and opportunity to learn and be well prepared with the potential impact of the codes before rushing in to make changes to their compensation structures, documentation, HR policies, or compliances. It needs to be a coordinated effort involving the relevant stakeholders and teams across an organization."

In Conclusion

While there is hesitation regarding the efficacy and ease of implementation regarding the Labor Codes, there is also an overwhelming excitement and anticipation for the potential benefits these codes could facilitate. Not everything can be seamless, but the overarching opinion is hopeful that these changes will mutually benefit employers, employees, and the majority of labor in India.

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

LEGAL ERA

(EDUCATION, RESEARCH & ADVOCACY)

ADAPTING TO THE NEW NORMAL WFH

Most notably, while the WFH model has its own flipside, families are closer than ever as most employees have relocated to their hometowns, productivity has not been negatively impacted as employees continue to work through unanticipated consequences and there is greater freedom for employees to be able to work from anywhere and not necessarily within the confines of the physical workplace

VINEET VIJ
Global General Counsel, Tech Mahindra Ltd

> In spite of the multitude of challenges, the Indian companies managed to facilitate WFH at lightning speed in order to ensure business continuity and surpassed their customer's expectations, which is a testament to the unwavering faith of global customers that have trusted Indian IT companies in their ability to come up with unique solutions and ensure compliance in the process of delivering optimal results

COVID-19, the virulent disease caused by SARS-CoV-2 virus, that caught the entire world unaware of the disastrous consequences it has brought along, will be remembered for generations to come. Ever since the beginning of 2020, the term COVID-19 emerged as the global buzzword though for all the wrong reasons and continues to be the most challenging thing imperilling the whole of mankind. Rallying behind the same, if not along, the acronym "WFH" for Work-from-Home has also firmly etched its place in the minds of people to be remembered for the times to come for reasons that the world is still trying to figure out as it witnesses the paradigm shift from traditional workplace environment to a hybrid one with people working from home or anywhere feasible besides their homes. Owing to COVID-19, continued disruption and not allowing normalcy to be returned, the governments and businesses across the globe were put under the tremendous task as to how to keep everything up and running. Nobody thought that the WFH model, which though is not a new concept, would become the most needed one to be adopted world over as the new normal of not only keeping things moving but an integral way to earn livelihoods. The ongoing pandemic fast-tracked this transition at an unimaginable pace, which until recently had traditionally witnessed a plethora of challenges that resisted WFH due to stringent regulatory restrictions, contractual impositions by customers & stakeholders, data protection concerns vis-à-vis several other infrastructural challenges. This sudden shift to WFH during the pandemic was especially challenging for the industry where data, devices, and even personnel in certain cases were not allowed to operate outside the confines of a pre-specified workplace-setting in terms of infrastructure set-up, regulatory and/or customer requirement.

Legal Regime

Legally speaking, the crises faced by industries in implementing WFH stemmed from an unprecedented lack of clarity of provisions around remote-working. Notwithstanding circulars and guidelines that public authorities released from time-to-time, there was a lack of statutory recognition of the WFH set-up as well. The government agencies taking account of the emergent situation swiftly acted on the concerns raised by the industry by allowing relaxation in regulatory norms from March 2020 itself and in November 2020, released fresh set of OSP guidelines to wholeheartedly support the 'work-from-home' practice. The registration requirement for OSPs had been altogether done away with and the BPO industry engaged in data related work have been taken out of the ambit of OSP regulations. In addition, requirements such as deposit of bank guarantees, requirement for static IPs, frequent reporting obligations, penal provisions and other restrictions were also removed. Similarly, several other requirements, which prevented companies from adopting 'Work from Home' and 'Work from Anywhere' policies, were also relaxed. Small companies in rural areas can now connect to OSP centers of larger companies who receive work from various customers and further outsource it to smaller centers of rural areas, with further relaxations being introduced in June 2021.

Unfortunately, when compared with other countries, legal regime in India giving recognition to WFH is still very limited vis-à-vis WFH set-up and the rights & liabilities of employers and employees. WFH generally referred to as "telework" in several countries is understood as the practice of employees using laptops, desktops, mobile phones, and other tools to perform work beyond the employer's premises. In California, for instance, state employees were encouraged to work from home with telecom tools and computers vide the State Employment Telecommuting Program, 1995 itself. Teleworking has been recognized by the International Labour Organization (ILO) vide Convention No. 177 on "Home-Work" of 1996, which aimed to establish equal status for employees working from home and employees working in the physical workplace setting. The US federal government also promotes teleworking for its employees. The Telework Enhancement Act, 2010, "requires each Executive agency to establish a policy under which eligible employees are authorized to telework" and also prioritizes work-life balance of federal government employees. Following the ramifications of the pandemic on the physical workplace, several countries passed laws giving legal recognition to WFH and outlining rights of employer and employees engaged in WFH. Spain introduced the Royal Decree Law 28/2020 of 2020, providing a framework for remote work, Turkey passed the Remote Working Regulation (2021) and Argentina passed the Teleworking Contracts Law (2021).

Challenges

India is yet to introduce comprehensive labor legislations and regulations governing the WFH set-up. General perception points towards the criticism of rigid Indian laws and the inability of laws to change with the times with a view to adopt a pragmatic approach towards rapid developments in the business environment. For instance, even the new Labor Codes ratified in 2020, are silent on the WFH phenomenon and do not specifically recognize work from home as a work arrangement. These newly introduced Labor Codes were expected to be an answer to the criticism; however, these are also largely silent on WFH. The only exception in the current regulatory regime would be the OSP guidelines. Legal recognition of WFH, along with associated terms and conditions such as flexible work timings, extended working hours, leaves, payment of wages & overtime, and other rights and obligations of employer and employee under in the WFH regime is the need of the hour. The Indian government can play a transformative role towards India formally adopting the WFH arrangement. The success of the WFH model in India is highly dependent on the efforts of the government towards policymaking in collaboration with industry leaders and setting standards for compliance. The Indian Industry eagerly awaits a comprehensive legislation governing the intricacies of WFH for enabling business activities, since the way of working has been permanently altered and is no longer limited to an employee located within the contours of the physical workplace.

The new regime of hybrid workplace where few are in office and remaining working within the leisure of their homes adds to the existing issues which companies are facing during the ongoing WFH era, as there is often a lack of cohesiveness which stems from co-workers not having the same sense of camaraderie which exists when entire teams collaborate in a physical setting. Thus, there is increased effort on the part of employers and employees in terms of extensive communication to overcome the physical divide. Employees greatly benefit in the physical workplace for various reasons: optimal induction and knowledge-building of new and existing employees, valuable interactions, and team collaboration, building rapport with co-workers, and engaging new employees to adopt the company culture. These objectives cannot be entirely achieved in a WFH setting since there is no substitute for human interaction.

The WFH model has also led to an increase in cybersecurity threats. Employees bear the responsibility to ensure that they do not inadvertently become conduits for cybersecurity attacks. IT security specialists are taking several steps to create a safe working environment for employees to carry on their tasks without the looming threat of cyberattacks. While monitoring activities in WFH environments and assessing the risk of specific activities, employers have to be mindful of the right to privacy of the employees. Implementing monitoring measures in the WFH regime has not been easy. The Information Technology (IT) Act 2000 and Sensitive Personal Data or Information (SPDI) only provide a brief outline for permissible data access and protection. This has created a unique challenge for companies to implement cybersecurity measures amid WFH measures.

The idea of the "workplace" is now evolving in a unique way. The Federal Social Court of Germany recently decided that a man walking from his bed to his home office constitutes "commuting" to work and suffering an injury during such commute would be covered by workplace insurance, thus establishing an entirely distinctive interpretation to workplace accidents. It is expected that there will be many judicial interpretations across the world that will further contribute to the otherwise limited scope of WFH as encapsulated in legislations. Amongst many challenges faced by the companies, few of the unique ones are like interpretation of "workplace", "working hours", "requirement to undertake work at odd-hours", "harassment at workplace" and other crucial aspects governing employees as they continue to work beyond the physical workplace. Although statutory provisions relating to working hours and leave entitlements still apply as they were when workers were performing from office premises, ensuring actual implementation in the midst of WFH can be perplexing, especially for establishments that do not have the digital wherewithal to monitor employees' working hours and leaves.

The other set of distinct challenges for employers is around regulating employees' conduct in a virtual workplace. For instance, employees may be subjected to harassment or sexual harassment even during WFH. However, the anti-sexual harassment policies framed by employers, in several circumstances, may not specifically address this issue in WFH mode. In addition to revising the code of conduct, anti-sexual harassment and disciplinary policies to acknowledge instances of harassment during WFH and implementing measures to deter such instances along with encouraging employees facing such issues to report the same, it is necessary for employers to apprise the workers of their rights, duties and responsibilities towards prevention of harassment, sexual or otherwise, particularly within the virtual workspace scenario.

The Big Picture

In a nutshell, everything is not down south. In spite of the multitude of challenges that WFH brought about, the Indian companies with due support of the regulators across the globe, managed to implement WFH at lightning speed in order to ensure business continuity and surpassed expectations of their customers, which is a testament to the unwavering faith of global customers that have trusted Indian IT companies in their ability to come up with unique solutions and ensure compliance in the process of delivering optimal results. Most notably, while the WFH model has its own flipside, families are closer than ever as most employees have relocated to their hometowns, productivity has not been negatively impacted as employees continue to work through unanticipated consequences and there is greater freedom for employees to be able to work from anywhere and not necessarily within the confines of the physical workplace.

As we enter the new year combating the surge of Omicron, another variant of the virus causing COVID-19 cases, seems to yet again de-stabilize economic activities by drifting the world into the unknown waters, the spirits of all stakeholders including of employers and employees grows higher to accept WFH as the new normal.

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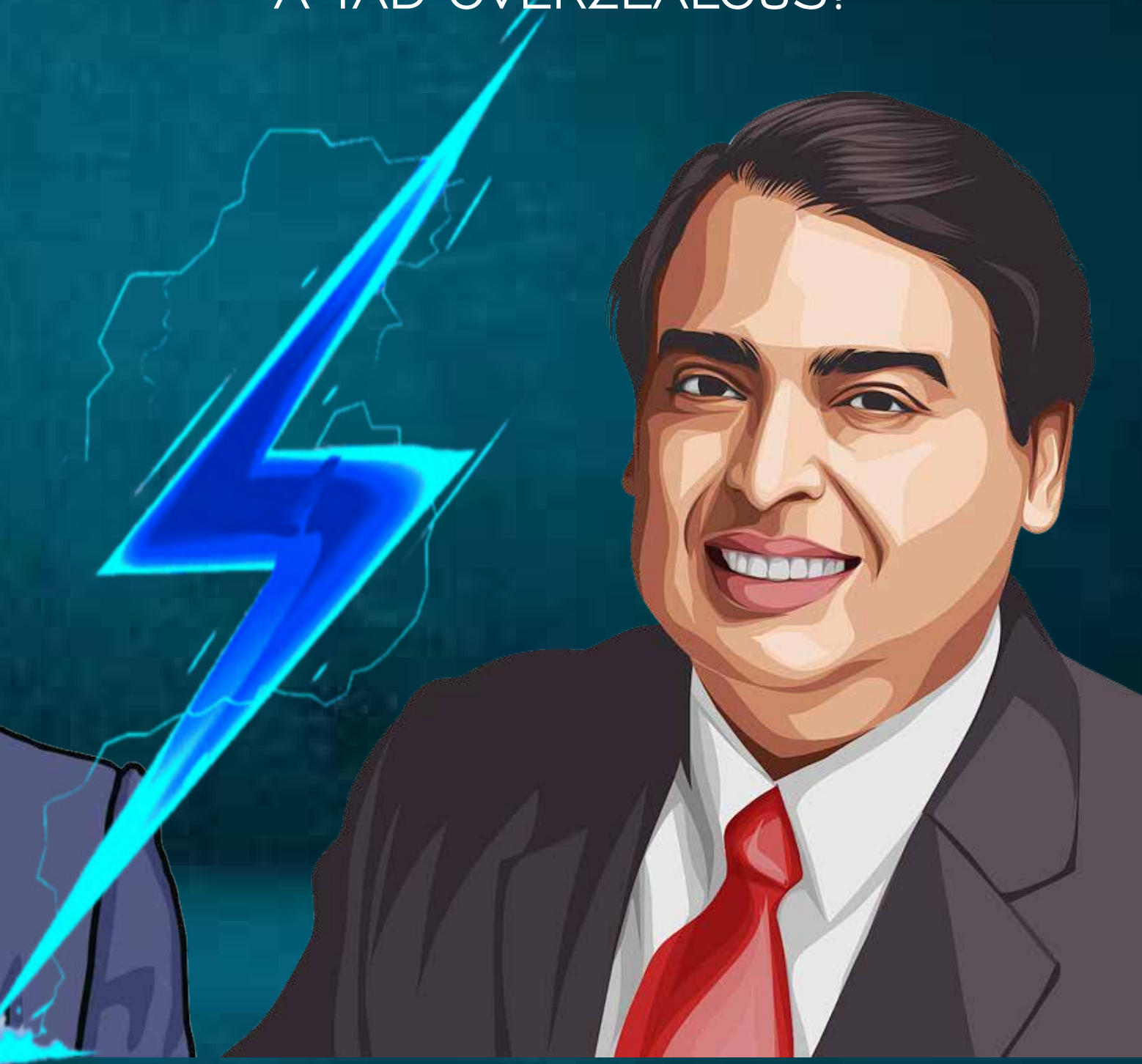
The "ease of doing business" requirement for enhancing the Indian economy and enabling business transactions such as mergers, acquisitions and takeovers needs consideration

THE CCI ORDER IN THE AMAZON DISPUTE: A TAD OVERZEALOUS?



MINI RAMAN
Partner
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> *"Careful consideration needs to be made of the implications of overturning or suspending earlier orders or approvals by any court or regulatory body*

The Competition Commission of India ("**CCI**") vide an order dated 17th December 2021 ("**Order**") held that Amazon had suppressed the actual scope and purpose of the transaction to acquire Future Coupons Private Limited ("**Future Coupons**"). The CCI further held vide the Order that Amazon had failed to give notice of the transaction as required under Section 6(2) of the Competition Act, 2002 ("**Act**"). Accordingly, the CCI imposed a penalty of ₹ 202 crores on Amazon. The CCI further held that its approval vide Order dated November 28th, 2019 ("**Approval Order**") shall remain in abeyance.

According to the Act, any person undertaking an M&A transaction is required to apply for the approval of the CCI and/or notify the CCI[1]. In the instant case, Amazon had notified the CCI of the transaction by Amazon to acquire Future Coupons and had procured the prescribed approval vide the Approval Order. However, the CCI, after hearing all the parties to the dispute and examining applicable documentation including internal communication between the senior management of Amazon, concluded that the intent of Amazon through the acquisition of Future Coupons was to obtain strategic rights in Future Retail Private Limited ("Future Retail"). Further, according to the CCI, Amazon had presented the acquisition as a transaction to acquire Future Coupons. This led to the CCI (in addition to imposing penalties), holding that the Approval Order is in abeyance.

The case raises numerous interesting issues. The objective of this article is to examine the Order of the CCI holding its earlier Approval Order in abeyance.

Interestingly, the CCI has passed the Order under Section 45 (2) of the Act. This provision enables the CCI to pass "such orders as it deems fit" if a person, who

1 Section 6(2) of the Competition Act, 2002.

(a) makes any statement or furnishes any document which he knows or has reason to believe to be false in any material particular; or

(b) omits to state any material fact knowing it to be material; or

(c) willfully alters, suppresses or destroys any document which is required to be furnished as aforesaid.

In our view, the ruling by the CCI of holding its earlier Approval Order in abeyance is not clear. It is well understood that business entities enter into acquisition transactions for numerous reasons such as for entering new markets, for inorganic growth etc. The reasons for entering M&A transactions are business considerations. The law needs to be in tandem with these considerations.

Furthermore, in India, there is a plethora of legislation governing the conduct of acquisitions, especially by foreign owned multinationals, such as the FDI Policy, the Competition Act, 2002, the Companies Act 2013 and the Foreign Exchange Management Act, 1999 and the regulations made thereunder, the SEBI regulations etc. This makes the regulatory framework for conducting transactions complicated and difficult to maneuver. Additionally, the multitude of regulations bring with it numerous regulatory bodies, each exercising separate jurisdictions.

Our view is that the "ease of doing business" requirement for enhancing the Indian economy and enabling business transactions such as mergers, acquisitions and takeovers needs consideration. If highly esteemed regulatory bodies such as the CCI pass orders nullifying or suspending their past approvals (such as in the instant case) the very veracity of such regulatory bodies is called into question. It will also render the making of business decisions based on regulatory implications more difficult. Consequently, undertaking M&A transactions in such an uncertain regulatory environment becomes complicated. Such orders allow uncertainty to creep into the regulatory framework which is extremely detrimental to the business environment as a whole.

To conclude, in our view, careful consideration needs to be made of the implications of overturning or suspending earlier orders or approvals by any court or regulatory body. Failure to do so, may result in overzealous regulation which may in turn have extremely harsh and far-reaching implications.

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The Importance Of **Trust In** Merger Regulation Under Competition Law In India

Trust is essential for social cohesion and well-being as it affects the government's ability to govern and enables them to act without having to resort to coercion

VINOD DHALL
Senior Advisor
Touchstone Partners

Touchstone Partners

> *"The CCI held Amazon guilty of omissions, false statements and misrepresentations contained in its application submitted in 2019 to the CCI for approval of its investment in the Future Group*

Amazon suffered a serious setback in its legal struggles with Future Retail in India when the antitrust regulator, the Competition Commission of India (CCI), passed an order last December – the first of its kind in its brief enforcement history – imposing a heavy penalty equivalent to about USD 27 mnonit.

The Indian merger regime is mandatory in cases where the prescribed turnover or assets thresholds are crossed. The acquiring party is required to submit an application with detailed information in the prescribed form. In this case, the CCI held Amazon guilty of omissions, false statements and misrepresentations contained in its application submitted in 2019 to the CCI for approval of its investment in the Future Group. The CCI concluded after due process that Amazon had failed to fully and properly disclose the purpose of the acquisition, the interconnected transactions and certain critical internal documents submitted to its senior management which were essential to give the CCI a clear and complete picture of the transaction required for a proper appreciation of the commercial and economic contours of the transaction and to decide the appropriate framework for its assessment.

In CCI's view, the deal was designed effectively to give Amazon strategic rights in regard to the operations of Future Retail Ltd, which has a vast network of retail outlets across the country thereby benefiting the retail and speedy delivery operations of Amazon. It noted that Amazon had pursued the deal to ensure that the business of Future Retail becomes a strategic asset for Amazon to expand and enhance its ultra-fast delivery services. In the words used in Amazon's internal communications, through this deal, Amazon intended to obtain a "foot in the door" in India's rapidly expanding retail industry. However, in its merger filing the company represented the deal as being limited to acquiring interest in Future Coupons a company in the business of marketing and distribution of loyalty cards, corporate gifts cards and reward cards to corporate customers, etc. and that Amazon had decided to invest in Future Coupons with a view to strengthen and augment the latter's business.

The CCI observed that "if a party conceals/suppresses and/or misrepresents to the Commission the scope and purpose of the Combination and obtains approval, the same would effectively amount to approval/consent having been obtained by way of fraud. Such breach of trust of the Commission, established under the Act for the benevolent purpose of promoting and sustaining competition in markets in India, manifests a deliberate disregard to the trust based regulatory mechanism provided under the Act."

The CCI order draws attention to a wider issue—that of the role of trust in governance and institutional functioning. While trust is the basis for an orderly functional society, its role is critical in the relationship between individuals and government and governmental institutions. A document[1] of the UN Department of Economic and Social Affairs states that trust is integral to the functioning of any society. Trust in each other, in our public institutions and in our leaders are all essential ingredients for social and economic progress, allowing people to cooperate with and express solidarity for one another. It allows public bodies to plan and execute policies and deliver services. It observes that greater public trust has been found to improve compliance in regulations and tax collections, even respect for property rights. It also gives confidence to consumers and investors, crucial to creating jobs and to the functioning of economies more broadly.

Similarly, an OECD document[2] states that trust in government has been identified as one of the most important foundations upon which the legitimacy and sustainability of political systems are built. Trust is essential for social cohesion and well-being as it affects the governments' ability to govern and enables them to act without having to resort to coercion.

The above mentioned UN document notes that trust in government or its institutions has deteriorated in recent years showing a marked decrease in developed countries. In the United States, trust in the national government has declined from 73 per cent in 1958 to 24 per cent in 2021. Western Europe has seen a similar steady decline in public trust since the 1970s. The percentage of people expressing confidence or trust in their Governments in 62 developed and developing countries peaked at 46 per cent, on average, in 2006 and fell to 36 per cent by 2019. It similarly notes comparable declines in other types of institutions e.g. trust in financial institutions in these countries decreased on an average from 55 per cent to 46 per cent. It noted the Euro barometer data showing that trust in political parties in EU countries has remained low, hovering between 15 and 20 per cent on average between 2000 and 2019.

Trust in public institutions is easily eroded by perceptions such as of corruption in high places, suspect motives behind policy measures, partisan enforcement of laws, and even by the prevalence of economic uncertainty. In our own country for example trust in government is being undermined by the perception that the police and certain other government agencies are biased in their enforcement. Perceived blatant corruption some years back in the allocation of natural resources like spectrum and mineral leases had deeply offended the sensibilities of the intelligentsia.

More recently, holding of large electoral rallies across election bound states before these were restrained by the Election Commission and later even holding physical rallies under the garb of virtual rallies visibly throwing COVID precautions to the wind while exhorting the public to strictly adhere to such measures has been damaging to the citizens' faith in the sincerity of purpose of the leaders. Permission to go ahead with major religious festivals like the Kumbh in Haridwar during the pandemic intensified cynicism among the public. Reports about the open availability of fraudulent negative COVID test reports on these occasions undermined the reputation of Indian tests not only in India but also overseas leading many countries to derecognize Indian COVID tests in allowing entry into their countries. The disparity in the economic impact of the pandemic on different segments of society also has hit the faith of the poor people in the government.

On the other hand, public trust can be enhanced by transparency in governance, by evenhandedness in enforcement of the law, and by policies that are fair and sensitive in the distribution of public benefits. The use of modern technology in governance e.g. through the COWIN app for access to vaccines, or the direct transfer of benefits to the beneficiary bank accounts have strengthened public trust in government.

1 https://www.un.org/development/desa/dspd/2021/07/trust-public-institutions/

2 https://www.oecd-ilibrary.org/docserver/gov_glance-2013-6-en.pdf?expires=1643015233&id=id&accname= guest&checksum=F262B48194E57BAD5EAE9F70D338C600

However, trust is not a one-way street. Public discourse has been mainly around the issue of trust of the citizens in government. But trust the other way round, of institutions in the stakeholders, is equally important. Institutional regulation is crucially dependent on the adherence of the stakeholders to the letter and spirit of the law. Flagrant violations or gaming of the system by those who are the subject of the law seriously erodes the effectiveness of the regulation. Besides, suspicion can be the cause of over regulation e.g. the laws and policies in the days of command and control economic regime, or tax rules built around suspicion of wide spread evasion.

In the enforcement of competition law, an important consideration of the CCI has been not to hurt the country's 'ease of doing business'; it even adopted the novel 'green channel' which allows for the approval of a merger in certain circumstances by the mere filing

"In the enforcement of competition law, an important consideration of the CCI has been not to hurt the country's 'ease of doing business'

of the application. In the absence of trust of the Commission in the filings made by parties to a merger, it can make the green channel unworkable. If the Commission were to suspect the information submitted in merger filings and felt compelled to resort to deeper due diligence into such information to check its veracity and completeness, it could mean that the business community should give up expectations of speedy decisions in merger cases, thereby delaying the consummation of their deals.

Like in most competition law jurisdictions, in India too, merger approval depends heavily on the veracity and completeness of the information furnished by the parties themselves; the parties are also required to give a declaration that to their knowledge and belief all information given in the application form is true, correct and complete. Thus the responsibility for the smooth and efficient functioning of the merger approval regime depends equally on the trust the CCI can repose in the stakeholders.

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Vinod Dhall was the founding Member and acting Chairman of the Competition Commission of India (CCI). He laid the groundwork for the eventual functioning of the Commission inter alia by preparing the draft regulations, framework for competitive analysis, and capacity building; earlier when in government, he was a key player in the enactment ofthe Competition Act itself. He is an active and respected expert in competition policy and law, and is sought out for his high-level strategic advice and unique perspective on complex issues, including in mergers, cartels, abuse of dominance matters and compliance.He has advised global and Indian clientsin several high-profile cases, both domestic and cross- border. Clients comment on his "unquestionable understanding and pedigree", find him "an expert amongst experts" (Chambers Guide 2015) and he is considered "a central figure in India's competition law marketplace" (Indian Lawyer 250). Chambers and Partners Global Ranking – 2019, 2020, 2021 and 2022 ranked him as the only "senior states people" in the competition / antitrust field for India. He is also recognized as Global Leader / ThoughtLeader by Who's Who Legal in 2021 and 2022 and a leading lawyer in the competition /antitrust field for India by Global Competition Review.

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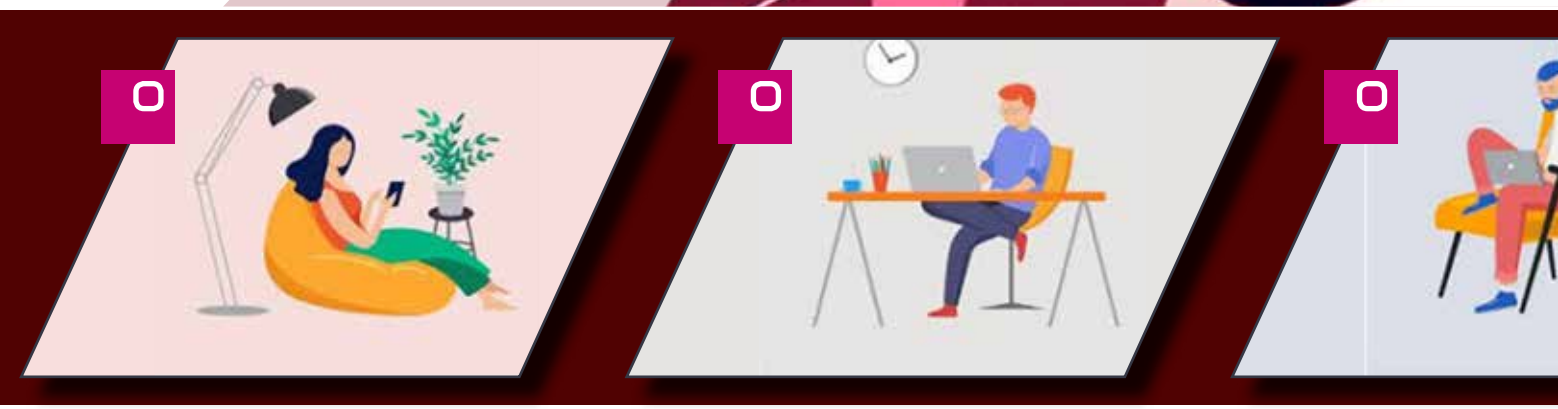
THE HYBRID WORK MODEL & LABOR LAW CONSIDERATIONS IN INDIA FOR COMMERCIAL ESTABLISHMENTS

With the hybrid work model providing the "best of both worlds" advantages, strategizing workspaces has become the need of the hour…



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The COVID-19 pandemic has transformed the traditional notion of workspace across the globe. With the "work from home" model being embraced out of necessity than choice in the first half of 2020, recent findings, and surveys[1] indicate that this model of work is here to stay, albeit in combination with return to the traditional office space in some measure. The combination of the abovementioned modes of operation has led to the growth of the "hybrid work" model, which is also being referred to as the "next great disruption".[2]

In view of the peculiarities and specific requirements associated with this new work model, we shall discuss some aspects as regards the workplace and employee policies which may be revisited by employers.

Pandemic-induced office makeovers

The foremost area of concern that may need to be revisited is the preparedness of an organization for the return of its employees back to office in terms of extant infrastructure. To ensure healthy and sustainable workspaces, organizations are revamping their offices by doubling the workspace allocated per person with fluid workstations to ensure conformity with physical distancing norms without compromising on inclusivity and collaboration. Large investments are also being undertaken in voice-operated technologies, advanced sensors and devices to reduce touch in elevators and other common spaces.[3] Certain other common practices including installation of air filters, thermal screening at entrances, maintenance of visitor records, and more frequent cleaning and sanitation schedules are also being undertaken in the interest of the health and safety of the workforce.[4]

Hybrid working and employment policies

In addition to the adjustments to office interiors, other employment-related aspects as set out below, would need attention of businesses against the backdrop of implementing the hybrid work model.

(a) Modifications in employment contracts / policies

Employment contracts/policies typically contain clauses setting out the conditions of employment, roles, duties, and functions of an employee, and the location from which employees would be required to operate to render services they are entrusted with. With the hybrid work model, employment agreements / policies may need to be modified to include appropriate provisions recording remote working or the flexible working arrangement adopted by the organization for the specific role for which an employee has been appointed.

(b) Data privacy and confidentiality

The enhanced reliance on cloud and data driven technologies and systems due to the hybrid work model has heightened the importance of having

1 www.forbes.com/sites/joemckendrick/2021/08/31/remote-and-hybrid-work-is-here-to-stay-and-thats-why-quality-of-worklife-matters/?sh=8f9725d70919.
2 https://www.microsoft.com/en-us/worklab/work-trend-index/hybrid-work.
3 https://www.financialexpress.com/money/how-workplace-in-india-will-change-in-post-covid-19-world/2012546/.
4 https://www.businessinsider.in/advertising/ad-agencies/article/how-are-indian-organisations-and-agencies-redesigning-their-office-spaces-for-a-post-covid-world/articleshow/81277517.cms.

> *The human resources policies of organizations pertaining to grievance redressal, disciplinary procedures, as well as other internal policies would have to be suitably amended to cover situations that may emanate from the hybrid model*

robust data privacy and security provisions along with stricter confidentiality obligations imposed on employees. These could be either included in the employment agreements or employee policies, or be incorporated in separate undertakings obtained from employees, basis the reliance on data and per the requirements of the job profile or function. Concerns in this regard may also be addressed by formulating or revising data protection policies to cover and address issues related to cyber security breaches associated with home networks. Further, employers may also undertake training sessions to educate employees as to what constitutes sensitive data and breach of confidentiality, etc. to protect the interests of their organization.

(c) Working hours policy

With the adoption of a hybrid work model, the specification pertaining to number of hours expected to be worked by employees, both in terms of physical office presence and virtually, would need to be set out in the work hours' policy or employment agreements. The practices or policies outlining the manner of recording entrance timings and logged hours along with the distributional arrangement between both modes expected from employees, would have to be modified and set out. This would aid in computation of overtime payments that certain employees are eligible to receive as per the state specific shops and establishments legislations applicable to commercial establishments, as well as revisions in compensation, if any.

(d) Human resource or personnel policies

The human resources policies of organizations pertaining to grievance redressal, disciplinary procedures, as well as other internal policies would have to be suitably amended to cover situations that may emanate from the hybrid model. Lucid delineations as regards the concept of 'workplace' would aid in outlining the employers' obligations and liabilities arising there from. In fact, organizations may also consider formulating a distinct 'work from home' or 'flexible working' policy which extends and amends the application of such internal policies, as necessary.

(e) Anti-sexual harassment policy

As per the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013 ("POSH Act"), all workplaces employing ten or more employees are required to frame an anti-sexual harassment policy to deal with complaints by women against sexual harassment at workplace. The POSH Act defines 'workplace' in a broad manner to include any place visited by the aggrieved woman arising out of or in course of their employment, in addition to the physical workplace.

DIVYA KUMAR
Associate

While the notional extension of the definition of 'workplace' may lead one to infer that acts of sexual harassment occurring through an online medium in remote working conditions would get covered, the same may be expressly incorporated in the anti-sexual harassment policy to avoid any ambiguity. In this regard, employers may also consider training their employees as to their rights, responsibilities, and prudent conduct in the virtual mode, through regular sessions and workshops.

(f) Reassessment of remuneration structure or provision of additional allowances

Depending on the working model adopted by employers, revisions may be made in the employees' remuneration structure. In this regard, employers would be

required to comply with the applicable requirements under the Industrial Disputes Act 1947 and provide adequate and due notice regarding such change in the service conditions of eligible employees. In the same vein, employers would also have to ensure maintenance of parity in service conditions, benefits, and terms of payment for all employees of the same category.

Employers may also revise allowances that employees are entitled to, basis the requirements of the working model adopted. For instance, allowances as regards the recurring expenditure incurred by employees on broadband internet connections and electricity in the hybrid work model may be disbursed. Further, allowances such as the conveyance or travel allowance may be altered and adjusted basis the work model adopted. Employers may also consider providing reimbursements of costs associated with setting up a workspace at employees' residential premises including inter alia costs towards furniture and workstations. These may be reimbursed either through allowances or provided for at discounted rates by employers tying up with vendors for the same.

(g) Heightened importance of employee well-being

The COVID-19 pandemic has immensely heightened the importance of medical insurance coverage of employees (if not already being provided for either through a policy or through coverage under the Employees' State Insurance Act 1948). In the same vein and in the interest of the employees' overall well-being, organizations are also providing for assistance programs to deal with stress, anxiety, and mental health issues.

Conclusion

With the hybrid work model providing the "best of both worlds" advantages, strategizing workspaces has become the need of the hour. To sail through this transition, some aspects of common concern have been highlighted above. While such modifications and amendments would be contingent on the form of hybrid work adopted, the aforementioned aspects may serve as a starting point for organizations' assessment of their preparedness to deal with the novel requirements of this new mode of operation.

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In India, for example, the first trigger to scrutinize any combination of enterprises is assessing the combined thresholds of assets and turnovers of such enterprises

DIGITAL ENTERPRISES

A NEW CHALLENGE TO COMPETITION AGENCIES

Digital economy, extremely fast-paced, is primarily based on innovations. Innovations are one of the most sought-after "safe-harbors" against anti-competitive practices which any defense counsel would prefer to advance this argument in the course of proceedings before competition agencies.

The market-share concentration amongst few global digital enterprises leading to either monopolization or oligopolistic concentration, may be a cause of worry for competition agencies. Coupled with foregoing, the option to acquire start-up digital enterprises is another facet often times characterized as "killer acquisition" but may also be an economic efficiency enhancing conduct between the parties. Thus, it is too early to confirm all commercial activities of digital enterprises are per se anti-competitive.

Options are being considered to introduce ex-ante legal regime to check the unfettered growth of few digital enterprises. However, ex ante assessment of ex post facto breaches, if any, may rarely be identical to exercising suo motu powers hence, a legal contradiction perhaps.

The economists and other experts who regularly assist and advise the Commissioners of competition agencies in all matters, must engage in carrying out robust research to find out authentic objective and economic justifications of the business models of these innovative enterprises.

As regards "self-preferencing", "gatekeeping" and "network effects", the emerging terminologies governing the current thought processes of

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competition agencies, are concerned, all these ingredients are found in traditional markets also. The members of trade associations, using the platform of trade association, promote their own business interests with all authorities and plead for better commercial terms which seem very similar to "self-preferencing".

These traditional industry sectors, either represented by their associations or by their own corporate business strategies, directly or indirectly prefer not to allow new entrants to enter the relevant market which seems identical to "gatekeeping".

Finally, the unwritten and sometimes written strategies of integration amongst upstream, mid-stream, downstream and end consumers/customers are identical to "networking" amongst the various independent enterprises in the entire vertical business chain of any industry segment. To demonstrate by an example, the concept of maximum retail price ("MRP"), validated by the Indian Legal Metrology Act 2009, is one of the most pernicious concepts of price-fixation in the entire vertical business chain which may be frowned upon by any competition agency not having the disadvantage of Legal Metrology Act equivalent. Most of the time manufacturers, setting the MRP, directly and/or indirectly ensure that a market operating price ("MOP"), below the MRP, be maintained throughout the vertical business chain until it reaches the end consumers. The MOP, more often than not, lead to fixation of "minimum resale price maintenance" between manufacturers and its distributors. The Indian Commission ("CCI") by applying existing provisions of the law has remedied these anti-competitive practices in the traditional markets thus far successfully. The latest decision of the CCI in the Maruti Suzuki case is an illustration in this behalf. With a bit of up to date but robust research by experts within a competition agency it seems that digital enterprises too can be investigated successfully and possible anti-competitive adverse effects, if any, can also be remedied without carrying out drastic amendments to the law.

A bouquet of few on-going cases, handled by the CCI within the existing framework of the law, would confirm the foregoing analyses more comprehensively:

1. The CCI via a prima facie order directed the office of the DG to investigate allegations of abuse of dominance against Amazon and Flipkart and both these digital enterprises challenged the jurisdiction of the CCI in Constitutional Writs before High Court and finally before the Supreme Court of India but failed to get any favorable order against the CCI. Investigation before the DG has resumed and the same is sub-judice as on date.

2. The CCI took suo motu cognizance of WhatsApp's updated privacy policy which enabled it to share user data with Facebook and its subsidiaries. The CCI prima facie held privacy to be an element of non-price competition and that in digital markets, unreasonable data collection and sharing may grant competitive advantages to the dominant players and may result in exploitative as well as exclusionary effects. The investigation is sub-judice.

3. Apple is alleged to impose unlawful restraints on app developers from reaching users of its mobile devices (e.g., iPhone and iPad) unless they go through the 'App Store' which is stated to be controlled by Apple. The Commission is of the prima facie view that mandatory use of Apple's IAP for paid apps & in-app purchases restrict the choice available to the app developers to select a payment processing system of their choice especially considering when it charges a commission of up to 30% for app purchases and in-app purchases.

Finally, amendment as normally has been suggested across jurisdictions, may solve some issues momentarily but it is reiterated that as the innovation in the digital market is extremely fast-paced, the competition agencies cannot keep pace with such dynamism and cannot plead frequent amendments to meet the challenges of the dynamic changes in this market. Most of the competition legislations do not per se envisage that all business entities must be investigated. All businesses are prima facie not engaged in anti-competitive practices. It is the statutory duty of the competition agency, assisted by a competent investigating wing and the experts on law and economics, to find out by adhering to the "principles of natural justice" the sub-set of business within a whole pie of any business model and establish breach, if any. This process must be carved out diligently.

It is the statutory duty of the competition agency, assisted by a competent investigating wing and the experts on law and economics, to find out by adhering to the "principles of natural justice" the sub-set of business within a whole pie of any business model and establish breach, if any

Conclusion

In India, for example, the first trigger to scrutinize any combination of enterprises is assessing the combined thresholds of assets and turnovers of such enterprises. However, applying these thresholds for digital enterprises may not always allow the CCI to scrutinize combination of digital enterprises. This legal infirmity may be remedied by introducing the transactional value of the deal besides the existing rule of assets and turnover tests. No further amendment in law may be needed in our view as of now.

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A GLOBAL AFFAIR: INFLUENCER GUIDELINES A BRIEF ANALYSIS

Businesses have through the years learned to overcome adversities, whether at an organizational, national, and now even at an international level. The growth of a business is no longer pegged to mere management of resources and planning for the future but also factoring in unforeseen events. The global pandemic has taught all businesses just that, and the advertising and marketing business has been no exception. When social media marketing was slowly gaining prominence, the pandemic ushered it into a completely new era of 'influencer marketing'. As per the report issued by the Statista Research Department, the global influencer market size has more than doubled since 2019. In 2021, the market was valued at a record 13.8 billion US dollars.

GLOBAL INFLUENCER GUIDELINES

Influencer marketing allows online consumers to form opinions on different products and services that are available and also provide invaluable data to companies to understand consumer trends. It is because of the impact that influencer marketing has on vulnerable

> *With laws and regulations continuously evolving and heavily borrowing from each other, the advertisers and social media influencers will need to keep a watchful eye, while simultaneously ensuring that all standards for protection of consumer interests are also abided by*

VASUNDHARA KUTHIALA
ASSOCIATE PARTNER

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consumers that the regulation around it has been time and again evaluated and different regimes have issued and revised guidelines to keep it in check. The International Consumer Protection and Enforcement Network, formerly known as the International Marketing Supervision Network (IMSN), a worldwide organization involving more than 60 countries, most of which are members of the Organization for Economic Cooperation and Development (OECD), has as early as 2016 issued guidelines for digital influencers to curb and penalize misleading practices. It has stated that digital influencers should be guided by the following principles:

(i) Disclose, clearly and prominently whether content has been paid for,

(ii) Be open about other commercial relationships that might be relevant to the content, and

(iii) Give genuine views on markets, businesses, goods and services.

When one analyzes the guidelines issued by authorities in different international jurisdictions, it is apparent that aforementioned principles are the underlying theme for them all. Whether it is the 'Disclosures 101 for Social Media Influencers' in the United States of America, the 'UK Code of Non-broadcast Advertising and Direct & Promotional Marketing (CAP Code) in the United Kingdom, the 'AANA's Code of Ethics and Best Practices Guidelines' in Australia or the Advertising Standards Council of India (ASCI)'s 'Guidelines for Influencer Advertising in Digital Media' in India, they all echo the same ideology. While some of the guidelines include penalties and some do not, establishing specific dos and don'ts for safeguarding online consumers from being duped by misleading advertisements and raising awareness of sponsored advertisements is the common thread that brings uniformity amongst them.

INDIA

In India, ASCI, the self-regulated watchdog of advertising, has tied up with well-known social media influencers, influencer marketing agencies and content creators to spread awareness of its guidelines and emphasized its motto of "When in doubt, call it out". The guidelines provide a ready reckoner for different social media platforms –

Platform	Guideline
Instagram	Disclosure label needs to be included in the title above the photo or in the beginning of the text that shows. In case only the image is seen, the image itself must include the label.
Facebook	Inclusion of the disclosure label in the title of the entry or post is necessary. If only the image/video is seen, the image or video itself must include the label e.g. FB story
Twitter	Inclusion of the disclosure label or tag at the beginning of the body of the message as a tag.
Pinterest	Inclusion of the disclosure label at the beginning of the message.
YouTube	Inclusion of the label in the title / description of the post.

Vlog	Overlaying of the disclosure label while talking about the product or service.
Snapchat	Inclusion of the disclosure label in the body of the message in the beginning as a tag.

With 'ASCI social' a webpage dedicated to this cause, a guide for advertisers and influencers to understand its guidelines, and ability to file complaints online and through WhatsApp, ASCI has made consistent efforts to not only educate all interested parties including the consumers of their rights and obligations, but also establish a redressal mechanism for aggrieved consumers. This coupled with the recent Consumer Protection Act, 2019 and the draft Central Consumer Protection Authority (Prevention of Misleading Advertisements and Necessary Due Diligence for Endorsement of Advertisements) Guidelines, 2020 clearly establishes the intent of the Indian authorities to keep a strict check on advertisers and social media influencers.

THE JURISDICTION CHALLENGE

What makes this analysis more interesting is the conundrum that surrounds the principles of jurisdiction with the advent of digitalization and globalization. Digitalization and globalization combined have made it easy for a consumer residing in any corner of the world to have access to social media influencers and purchase products from other parts of the globe. Then, the question would arise under which jurisdiction would such social media influencer and the advertiser/brand be held liable? A topic that is heavily discussed amongst academicians and also, judiciaries. In India, landmark judgments such as Banyan Tree Holding (P) Limited versus A. Murali Krishna Reddy and Anr and Worldwide Wrestling Entertainment, Inc. versus M/s Reshma Collection & Ors have drawn heavily from US case laws and combined key laws of jurisdiction under section 19 and section 20 of the Civil Procedure Code, 1908. However, the absence of an established legal framework has resulted in the varied evolution of jurisprudence on this subject matter.

CONCLUSION

Thus, it wouldn't be incorrect to state that the exposure of advertisers and social media influencers on a global scale has also increased. Advertisers and social media influencers will now need to be more mindful of the content from the perspective of the consumers that are exposed to it. With laws and regulations continuously evolving and heavily borrowing from each other, the advertisers and social media influencers will need to keep a watchful eye, while simultaneously ensuring that all standards for protection of consumer interests are also abided by. No wonder they say, with great power comes great responsibility.

WHAT WE DO?

We, here at Naik Naik & Co., regularly advise brands and a variety of influencers on their contracts and on the content created by them. Our services include academic opinions, script reviews and representing our clients in different forums to defend their rights.

ABOUT THE AUTHOR

Author: Vasundhara Kuthiala
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Vasundhara is equipped with extensive domestic and cross-border experience in the Media and Entertainment sector. She has gained considerable experience previously managing the legal contract and allied solution services suite for the media and entertainment domain at Bimal Parekh & Co. and working as in-house counsel at Do IT Talent Ventures (India) Private Limited and KWAN. Her transactional experience spans across a broad spectrum of legal contracts, solutions, and agreements for the Media & Entertainment space. Vasundhara is adept at structuring, negotiating, and implementing complex transactions involving the acquisition, development, exploitation, and sale of IP rights. At the firm, Vasundhara represents, manages, and leads negotiations of high-profile talent including writers, directors as well as production studios and companies on behalf of the firm. She negotiates sponsorship and endorsement contracts including celebrity licensing, clears advertising for use in online and off-line media, and handles product placement and media production.

PARTICULARITIES DEFINED CONTRIBUTION SUPPLEMENTARY PENSION SCHEMES IN BELGIUM

For employers in Belgium, it is therefore key to do proper due diligence when starting/ taking over a company in Belgium, as both DB and DC schemes pose a certain risk in terms of funding

BERND DE MARREZ
Counsel
Osborne Clarke

> *"The Supreme Court, however, ruled very clearly that the organizer/employer has the final responsibility and that the causes for any deficit are irrelevant*

Employers engaging in activities in Belgium often provide a supplementary pension plan to their employees, given the tax-friendly status of such benefit for both employers and employees. There are however some particular characteristics that should be kept in mind when starting or taking over a supplementary pension plan in Belgium. It is key for (future) employers in Belgium to be informed about the potential pitfalls of such plans before they engage in any commitments towards their employees.

Before discussing this in further detail, it is good to have a better overview of the pension system in Belgium:

Belgium has a three-pillar pension system which consists of i) earnings related statutory (and mandatory) pensions, ii) supplementary pensions which are mainly provided by employers to their employees, and iii) tax incentivized individual pension savings.

A. Statutory pensions

Participation in and contribution to the statutory pension scheme is compulsory for all citizens and employers alike. The state pension scheme is administered by several administrations due to the fact that employees, self-employed persons, and statutory personnel of the state have their own pension regulations. It was (and still is) the ambition of the Belgium government to harmonize these schemes in the future, but given the specific character of every system, it is likely that this will not happen in the near future.

The normal pension age in Belgium is 65, but this will be increased to 66 by 2025 and 67 by 2030. It is, however, possible

to retire earlier, provided that the person concerned has reached a certain age, and his/her total career in Belgium, and in countries that have a social security agreement with Belgium is sufficiently long. For statutory pension purposes, a 'full' career in Belgium counts 45 career years, whereas early retirement is possible as from 42 careers years, provided the person concerned has reached the age of 63 (or 44 career years at 60, 43 career years at 61/62).

B. Supplementary pensions

Private pension arrangements in Belgium are generally governed by the Act of 28 April 2003 on supplementary pensions (Supplementary Pensions Act, further SPA). Pension contributions by the employer can be seen as voluntary (if not bound by a sectoral agreement) and paid to the pension fund in accordance with the terms and conditions of the policy provider. Employees have limited options to withdraw their pension savings before their legal pension age (e.g. for purchasing real-estate).

Traditionally, Defined Benefit plans (further DB) – i.e. a pension plan in which an employer promises a specified pension payment predetermined by a specific formula rather than purely on the investment returns - were very successful in Belgium, but Defined Contribution plans (further DC) have become more dominant due to the advantages for employers (e.g. lower financial risk).

Before 2016, the law provided a guaranteed return of 3.25% on employer contributions and 3.75% on employee contributions in defined contribution plans. Due to the recent economic climate, it was decided that these percentages were too high. Therefore, as from 2016 the return that is guaranteed corresponds to the percentage of the average of the last 24 months of returns of the Belgian linear bonds for a duration of 10 years. This will be a percentage between 1.75% and 3.75%. Based on these rules, the guaranteed return for 2022 will be 1.75% and this will apply to both employer and employee contributions. The foregoing also implies that if a company is subject to International Financial Reporting Standards (e.g. IAS 19), you will need to take into account that DC plans in Belgium will be categorized as DB plans.

This has important consequences – which were

also underlined by the Belgian Supreme Court in 2017 – that the employer has the final responsibility for guaranteeing this guaranteed return should the insurance company or pension fund be unable to do so.

Particularly, the Supreme Court stated in its judgment that the organizer of a pension arrangement (i.e. mostly the employer) is liable for all vested reserves, as well as deficits regarding the minimum guaranteed return. The cause of potential deficits are irrelevant for the Supreme Court for the obligation of an employer towards its employees. This judgment was based on the liquidation of the pension provider 'Apra Leven' in 2011. In 2014, the Labour Court of Antwerp stated in its judgment that an employer has the final responsibility for the fulfillment of the pension obligations towards their employees, as there is a trilateral relationship created by an employer with a pension provider, be it i) an insurance company or ii) a pension fund. The employer has the final responsibility under Belgian labor law mainly due to the fact that i) the employees do not have a direct relationship with the pension provider and ii) pension contributions can also be seen as 'salary'.

In the case at hand, the organizer (employer) went to the Supreme Court to challenge the decision of the Labour Court of Antwerp. The argument was that the company could not be held liable as the issue was created by the insurance company, 'Apra Leven'.

The Supreme Court, however, ruled very clearly that the organizer/employer has the final responsibility and that the causes for any deficit are irrelevant.

C. Recommendations towards employers

For employers in Belgium, it is therefore key to do proper due diligence when starting/taking over a company in Belgium, as both DB and DC schemes pose a certain risk in terms of funding. Under IAS 19, DC schemes will indeed be categorized as DB schemes which can evidently confuse potential investors/employers.

In case of taking over a company in Belgium, the method of transfer (contractual or automatic following Transfer of Undertakings Protection of Employment Regulations, further 'TUPE') will, in practice not have a significant impact on the treatment of the supplementary pension plan(s), because (even) in a TUPE scenario, supplementary pension plans will not transfer automatically. However, according to the majority of legal scholars, the premium paid by the employer is in itself a benefit and therefore the new employer should offer an alternative benefit with comparable cost.

Proper due diligence is therefore needed in all cases.

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Bernd De Marrez is an employment & pensions specialist on the Employment team at Osborne Clarke in Brussels. Bernd is experienced in advising local and international companies on all aspects of individual and collective employment law, social security law and pension law (both statutory and occupational). He has practiced law in Belgium for ten years and is a graduate of KU Leuven where he also worked as a researcher in pension law.

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NINA GUPTA AND SOMVIR DESWAL ELECTED TO THE SUPREME COURT COMPLAINTS COMMITTEE

The gender sensitization group deals with sexual harassment cases taking place in the environs of the top court. Advocates Nina Gupta and Somvir Singh Deswal have been elected to the Supreme Court Gender Sensitization and Internal Complaints Committee (GSICC).

While Gupta, a member of the Executive Committee of the Supreme Court Bar Association, was elected with the highest number of votes (292), Deswal received 286 votes. They have been elected for a term of two years.

In 2013, the Chief Justice of India had constituted the GSICC relating to sexual harassment at the Supreme Court precincts.

In a landmark judgment in the Vishakha and others versus the State of Rajasthan 1997 case, the Supreme Court had also set 'Vishakha guidelines.' The guidelines formed the basis for the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013. It is also known as the Protection of Women Against Sexual Harassment (POSH) Act, 2013.

The Act defines sexual harassment at the workplace and creates a mechanism for redressal of complaints. Every employer is required to constitute an Internal Complaints Committee at each office or branch with 10 or more employees.

SPICEJET KNOCKS ON SUPREME COURT'S DOOR

The airline's plea was rejected by the Madras High Court.

SpiceJet, India's low-cost airline has approached the Supreme Court against a Madras High Court judgment. The high court had refused to interfere with an order of the company court admitting a winding-up petition against the airline.

Appearing for SpiceJet, senior counsel Mukul Rohatgi brought the matter before the Chief Justice of India, NV Ramana.

He sought urgent listing of the matter stating that the company would go into liquidation if the matter was not heard on priority.

On the counsel's plea, "Else, the company will fold up", Justice Rohatgi responded, "We shall look into this."

Credit Suisse had moved the winding-up petition before the company court. It informed that a notice was sent to SpiceJet, but it elicited no response. It claimed that SpiceJet was indebted to it for more than $24 million.

The issue arose when the airlines availed an engine maintenance facility from SR Technics, whose payment it wished to defer. For this purpose, it sought the services of Credit Suisse.

Credit Suisse made payments to SR Technics on behalf of SpiceJet.

Non-payment of the amount to Credit Suisse led to the winding-up petition.

After the company court had admitted the petition, SpiceJet approached the Madras High Court. However, a bench of Justice Paresh Upadhyay and Justice Sathi Kumar Sukumara Kurup dismissed its appeal.

SUPREME COURT LANDMARK JUDGMENT ON TRADEMARK RULING REPRESENTED BY ANAND & ANAND

The judgment sets an example for future cases. The Supreme Court of India has ruled that the legislative intent of the Trade Marks Act, 1999 should be upheld while deciding against the misuse of the trademark.

In a landmark judgment with wide ramifications on strengthening India's role in globalization and investment, a bench of Justice L Nageswara Rao, Justice BR Gavai and Justice BV Nagarathna held that the use of an identical (registered) mark needed to be restrained through an injunction. Thereafter, no inquiry was required regarding the reputation of the mark in India, the likelihood of confusion or honesty of adoption by the infringer.

It was the Supreme Court's first decision that distinguished between Section 29 (2) and Section 29 (4) of the Trade Marks Act.

The court was hearing an appeal moved by Renaissance Holding Inc, a company registered in Delaware, United States against the Karnataka High Court decision of 2019. The high court had reversed the injunction granted by a Bengaluru court in favor of Renaissance in 2012.

Renaissance Holdings, the proprietor of trademark 'Renaissance' that runs hotels, spas and clubs, had challenged the use of the insignia 'Sai Renaissance' for similar services in parts of South India.

While the trial court had ruled in its favor, the high court reversed the findings governing that there was no infringement as the plaintiff had failed to establish its reputation in India. The use of the trademark by Sai Renaissance was, therefore, honest and there seemed no confusion amongst the consumers. Thus, the high court order was challenged in the appeal.

Appearing for Renaissance Holdings, team Anand and Anand comprising Pravin Anand, Vaishali Mittal, Siddhant Chamola and Souradeep Mukhopadhyay convinced the apex court that the test for infringement of trademark was an important

question of law, requiring finality for future cases.

On behalf of the plaintiff, senior advocate K V Vishwanathan brought to the notice of the court that the proof of reputation was irrelevant in such cases.

The court stressed the need to honor the intention of the Indian Parliament behind enacting the Act. It was to increase globalization, encourage foreign investment, harmonize trademark systems and prohibit trademark misuse, the court said.

The Supreme Court bench observed that while interpreting the provisions of a statute, the textual interpretation should be matched with the contextual one.

"The Act must be looked at as a whole and it must be discovered what each section, each clause, each phrase and each word is meant and designed to say as to fit into the scheme of the entire Act. No part of a statute and no word of a statute can be construed in isolation. Statutes have to be construed so that every word has a place and everything is in its place," the court suggested.

Regarding the High Court's construction of Section 29, the bench observed that one of the purposes of the Act was to prohibit the use of someone else's

trademark as a part of the corporate name or the name of the business concern.

It stated, "If the entire scheme of the Act is construed as a whole, it provides for the rights conferred by registration and the right to sue for infringement of the registered trademark by its proprietor. The legislative scheme as enacted under the said statute elaborately provides for the eventualities in which a proprietor of the registered trademark can bring an action for infringement of the trademark and the limits on effect of the registered trademark."

Adding that a part of a section cannot be read in isolation, the Supreme Court said that ignoring the principle, the high court had picked up clauses, sections and sub-sections in isolation without even noticing the other provisions that it contained.

SUPREME COURT JUDGMENT ON INSOLVENCY BANKRUPTCY CODE

Section 29A(h) specifies the categories of persons who are not eligible to be resolution applicants. The Supreme Court has delivered an important judgment interpreting the scope of Section 29A(h) of the Insolvency and Bankruptcy Code (IBC). It maintained that the section specified the categories of persons who were not eligible to be resolution applicants.

The court said that it referred to persons whose guarantees stood invoked by the creditors of the corporate debtor. "A guarantor who has executed a guarantee in favor of a creditor in respect of a corporate debtor against which an application for insolvency resolution has been admitted under IBCs remains unpaid in full or part."

The court was dealing with the issue of whether the words 'such creditor' in the provision would include all creditors of the corporate debtor or just the creditor who had invoked the insolvency process.

Adopting a 'purposive interpretation' of the provision, a bench comprising Justice Sanjay Kishan Kaul and Justice M M Sundresh held that the disqualification under the Section of the IBC stood attracted on mere invocation of a personal guarantee by a creditor. It worked, notwithstanding the fact that another creditor initiated the insolvency process.

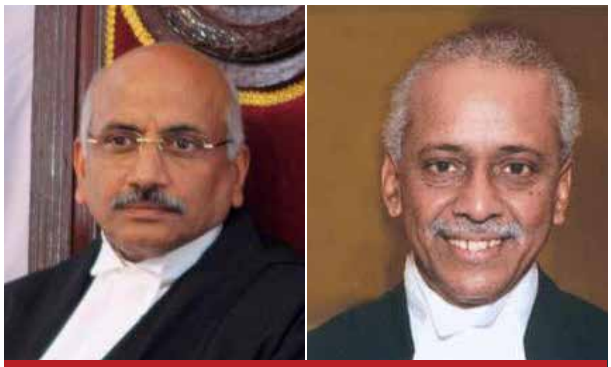
The court further held, "Ineligibility has to be seen from the point of view of the resolution process. It can never be said that there can be ineligibility qua one creditor as against the others. Rather, the ineligibility is to the participation in the resolution process of the corporate debtor. Exclusion is meant to facilitate a fair and transparent process."

The court also noted that the word 'person' under IBC was inclusive and illustrative in nature and was of wide import. "Once a person executes a guarantee in favor of a creditor with respect to the credit facilities availed by a corporate debtor, and in the case where an application for insolvency resolution has been admitted, with the further fact of the said guarantee having been invoked, the bar qua eligibility would certainly come into play," it stated.

"What the provision requires is a guarantee in favor of 'a creditor'. Once an application for insolvency resolution is admitted on behalf of 'a creditor' then the process would be one of rem, and therefore, all creditors of the same class would have their respective rights at par with each other," the court added "The provision, after the amendment, speaks of invocation by a creditor. The manner of invocation can never be a factor for the adjudicating authority to adjudge, as against its existence. Adequate importance will have to be given to the latter part of the provision which also disqualifies a person whose liability under the personal guarantee, remains unpaid in full or in part for the amount due from him, upon invocation," the Supreme Court bench ruled.

It noted that Section 29A had a laudable object of protecting and balancing the interest of the committee of creditors and the corporate debtor while shutting the doors to canvas the interests of others. "That is the reason why it consciously excludes certain categories of persons. We may add that the Section foresees the creditors who are otherwise either already under the insolvency resolution process or are entitled to go under it," the judgment stated. Solicitor General of India Tushar Mehta appeared on behalf of the appellant.

SUPREME COURT UPHOLDS NCLAT JUDGMENT



Justice Hemant Gupta and Justice V Ramasubramanian

Orders winding up of Devas Multimedia following government-owned Antrix Corporation's petition. The Supreme Court has upheld the judgment of the National Company Law Appellate Tribunal (NCLAT) allowing the winding up of Devas Multimedia, following a winding-up petition preferred by Central government-owned Antrix Corporation.

The court turned down the contention of Devas that the motive behind Antrix seeking winding up of Devas was to deprive it of the benefits of a unanimous award passed by the International Chamber of Commerce (ICC) Arbitral Tribunal in favor of Devas.

A bench comprising Justice Hemant Gupta and Justice V Ramasubramanian dismissed the appeal filed by Devas against the NCLAT judgment.

The court ruled, "We do not find any merit in the submission. If fraud, as projected by Antrix, stands established, the motive behind it is of no relevance. If the seeds of the commercial relationship between Antrix and Devas were a product of fraud perpetrated by Devas, it meant the disputes and arbitral awards were all infected."

Earlier, the Bengaluru bench of NCLAT had upheld the order passed by a former Chief Justice of India directing the winding up of Devas. The judge had ruled that such attempts on the part of a corporate entity (wholly-owned by the Government of India) would send a wrong message to international investors.

Devas, a Bengaluru-based company (majorly owned by Mauritian and US firms), was purportedly established by two persons, one being a former employee of the Indian Space Research Organization (ISRO), with a share capital of ₹ 1 lakh to pursue the digital multimedia services.

Devas and Antrix, the commercial arm of ISRO, entered into an agreement by which Antrix agreed to build, operate, and launch two satellites and lease the spectrum capacity on those satellites to Devas. The latter was to utilize this bandwidth to provide multimedia services across India.

However, Antrix, invoking force majeure, due to changes in policy decisions, terminated the agreement. A legal battle ensued between the two. In 2014, ICC rendered an award in favor of Devas. It directed Antrix to pay damages of around US$562.5 million to Devas, along with interest.

Antrix challenged the award before the Delhi High Court on the ground that the contract from which the arbitral award arose was wholly vitiated due to acts of corruption, fraud and criminality committed by the erstwhile management of Antrix and Devas.

While the challenge to the ICC award was pending, Antrix moved the National Company Law Tribunal (NCLT) for winding up of Devas. It said the objective of Devas was to "harm public interest and monies" and that ₹ 296 crores were used for the personal gain of a few officials. This was in clear violation of the law and the policy.

Stating that the continuance of Devas' name on the rolls of the Registrar of Companies was not

warranted at all, the Ministry of Corporate Affairs, supported Antrix's case.

In 2021, NCLT passed an order directing the winding up of Devas on the ground of fraud. The NCLAT confirmed the same, prompting the present appeal.

The Supreme Court held that there was no denial of the fact that Devas offered a bouquet of services. But none of those existed then or thereafter. It did not even hold necessary intellectual property rights though claiming it applied for it.

The court further noted that the formation of Devas was for a fraudulent and unlawful purpose. While the company was incorporated in December 2004, the preliminary meetings were held in Bengaluru and the US in 2003, followed by the signing of the Memorandum of Understanding (MoU).

"The groundwork was clearly done during the period from March 2003 to December 2004, even before the company was formally incorporated. Immediately after the incorporation, the agreement was signed in 2005. Therefore, the first ingredient of the Companies Act, 2013, (formation of the company for a fraudulent and unlawful purpose) was clear," the court ruled.

On the contention that the action of Antrix in seeking the winding up of Devas might send a wrong signal to the community of investors, the court said that it could not conclusively state anything on the same.

"But allowing Devas and its shareholders to reap the benefits of their fraudulent action, may nevertheless send another wrong message that by adopting fraudulent means and by bringing into India an investment of a sum of ₹ 579 crores, the investors could hope to get tens of thousands of crores of rupees, even after siphoning off ₹ 488 crores, the court concluded.

Devas was represented by senior advocates Mukul Rohatgi and Arvind P Datar. Additional Solicitor General N Venkataraman, along with Ajay Bhargava, Vanita Bhargava, Arvind Ray, Karan Gupta and Vansha S Suneja of Khaitan & Co, Delhi, represented Antrix.

JUSTICE MADAN B LOKUR RE-APPOINTED AS FIJI'S SUPREME COURT JUDGE

Justice Madan B Lokur

In 2019, it was the first time that an Indian was appointed as the judge of the apex court of another country.

Former Judge of Supreme Court of India Justice Madan B Lokur has been re-appointed as a judge of the non-resident panel of the Supreme Court of Fiji.

Justice Lokur was first sworn in as judge of the Supreme Court of Fiji in August 2019. It was the first time that an Indian was appointed as the judge of the top court of another country.

With effect from 21 January 2022, Justice Lokur's second term is for three years.

President of the Republic of Fiji, Ratu Wiliame M Katonivere did the re-appointment upon the recommendation of the Judicial Services Commission and the endorsement of the Attorney-General.

The Constitution of the Republic of Fiji states, "The judges of the Supreme Court, the Justices of Appeal and the judges of the High Court are appointed by the President on the recommendation of the Judicial Services Commission following consultations with the Attorney-General."

Justice Lokur was earlier a judge of the Supreme Court of India in 2012. He demitted office in 2018. Prior to that, he was Chief Justice of the Guwahati High Court and the Andhra Pradesh High Court.

RELIANCE DEAL IMPORTANT: FUTURE GROUP TELLS THE SUPREME COURT

The Company would sink with 30,000 employees if the pact did not come through. The Future Group has submitted before the Supreme Court that being in a financially precarious situation, Future Retail Limited (FRL) would "sink with 30,000 employees losing their jobs" if the ₹ 26,000 crores deal with Reliance Industries did not come through.

In the Amazon-Future case, both FRL and Future Coupons Private Limited (FCPL) argued that FRL should be allowed to go forward with the interlocutory proceedings of the scheme with Reliance. It would ensure finalizing the deal once the dispute with Amazon was concluded.

FRL pleaded, "We first sank because of the lockdown when people would not go to the shops. We are in this financially precarious situation. Fortunately, the banks are willing to wait. If the transaction goes through with the Reliance deal, we will pay off the banks. The deal is worth ₹ 26,000 crores and Amazon's stake is ₹ 14000 crores. Around 30,000 jobs will be saved. If you put this all together, let us get to that final stage. Amazon's interests are not hurt."

Appearing for the Future Group, senior advocate Harish Salve highlighted that under the Reliance deal, the employees were protected. "The September 2021 order protects both sides which say no final orders are to be passed. The interlocutory proceedings would be completed by then," he submitted.

Senior advocate Mukul Rohatgi, appearing for FCPL, submitted that the balance of equities favored Future Group and Amazon's interests were not harmed. "As regards the individual promoters of Future Group, the Biyanis, their entire assets were hypothecated. If we do not get through with the deal, everybody will sink," he stated.

Salve argued that Amazon wanted to paralyze everything. They were not interested in FRL, but were targeting the Reliance Group, its main competitor.

A bench comprising Chief Justice of India N V Ramana, Justice A S Bopanna and Justice Hima Kohli reserved its orders in the two pleas. First, the March 2021 order of the single-judge of the High Court that directed the attachment of assets of Future Group companies and its promoters for breach of Emergency Award. Second, the October 2021 order of the Singapore Arbitrational Tribunal's refusing to vacate the Emergency Award (EA) restraining it to continue with the Reliance deal.

The bench indicated that without going into the larger aspects, it might ask the Delhi High Court to decide the Future Group's appeal against the Singapore Tribunal's order. The bench also said that the High Court order could also be set aside as subsequent developments had taken place with the Singapore Tribunal affirming the EA.

Salve submitted that the EA had come after the Delhi High Court stated there was no arbitration agreement. Therefore, it had to be decided which of those orders would operate. He pointed out that the December 2020 single-judge High Court order had held prima facie that FRL had no arbitration agreement with Amazon.

Referring to the recent order of the Competition Commission of India (CCI), which revoked the sanction for Amazon's deal with Future Group, FRL argued that Amazon could not seek to enforce its contractual rights against Future Group until it got the CCI's sanction.

According to FRL, the manner in which the High Court judge proceeded to pass the enforcement orders, it failed to satisfy the requirements of the Principles of Natural Justice. It further said that the single-judge had denied FRL the opportunity to

file pleadings and rejected its contention that the award of the EA was a nullity.

It added that the High Court had issued an express direction to the concerned statutory authorities Securities and Exchange Board of India (SEBI) and CCI to consider Amazon's objections and pass appropriate orders on the applications filed by FRL for the approval of Reliance's transactions. The approvals, thereafter, granted by the concerned authorities, were not open to the single-judge to directly recall these validly obtained permissions.

The FRL further cited the December 2021 CCI's order, which suspended Amazon's deal to acquire 49 percent of stake in FCPL on the ground that Amazon had failed to disclose complete details.

Advocate Rohatgi submitted that both FCPL and FRL were on the receiving end of the High Court judge's order. He added that the injunction by the arbitrator was against both the companies and the promoters, the Biyanis.

He informed that the judge granted no time to respond and passed a 200-page order without any reply being filed and everyone was held guilty of contempt. He held that the judge had mixed up FCPL and FRL and it was examined like both the companies were the same.

He added that the agreement between Amazon and FCPL was enforceable in India only on the approval granted by the CCI. The agreement was granted but was revoked recently. It held that Amazon's conduct was fraudulent. Further, ₹ 200 crores fine was imposed on Amazon.

He questioned the hurry of hearing the matter daily, with no opportunity of filing the reply. "It has caused great prejudice to us. We are business people, the way we are injuncted and held guilty, has affected our business prospects," he said.

AMAZON TELLS SUPREME COURT IT INTENDS TO HELP FUTURE RETAIL

It urges to consider imposing a condition for the arbitral tribunal's order to be obeyed.

In the Future Retail Limited (FRL)-Amazon dispute, the American e-commerce giant has argued before the Supreme Court that FRL and Future Coupons Private Ltd (FCPL) have repeatedly violated the injunction orders passed by the Emergency Arbitrator (EA). Hence, they cannot seek relief from the court.

Appearing on behalf of Amazon, senior advocate Gopal Subramanium argued that the process adopted by the Future Group undermined and defeated the proceedings of the arbitration. It urged the court to consider imposing a condition on the Future Group to obey the tribunal's order.

Subramanium responded to Future Group's submissions that FRL would sink with 30,000 employees losing their jobs if the deal with Reliance did not come through. He submitted that Amazon was willing to assist them with the financial issue and had maintained its stand before the EA and the Enforcement Court.

"Why would we not be interested in the survival of this entity when we have the rights under the agreement," he stated.

Earlier, a bench comprising Chief Justice of India NV Ramana, Justice AS Bopanna and Justice Hima Kohli reserved its orders in two pleas.

The EA through its 2020 order had restricted FRL from going forward with its deal with Reliance and injuncted it from taking steps in furtherance of the Scheme of Arrangement with Reliance. The arbitral tribunal constituted to hear the Future-Amazon dispute reinforced the EA's order and dismissed FRL's plea to vacate the order.

Subramanium submitted that FRL acted in breach of the interim prohibitory order passed by the EA and because of that Amazon filed an enforcement application. He added that the Supreme Court's order in August 2021 took a view that EA is a validly constituted tribunal for purpose of the Arbitration and Conciliation Act and such orders were capable of effective enforcement. He said that regarding the directions of imposing penalties like imprisonment, Amazon was not interested in penalizing the Future Group. He argued that the arbitral tribunal pronounced its order in October 2021, rejecting FRL's application for vacation of EA's order. Therefore, the order must be complied with.

In response to the court's suggestion that FRL's appeal against the order of the tribunal might be heard by the High Court, the advocate submitted that FRL was entitled to an appeal under the Arbitration Act and Amazon had no issue with it.

Subramanium maintained that Amazon had always wanted a resolution, but it must take place in a fair manner. FRL must obey an order and not file a suit for an anti-arbitration injunction.

The advocate added that Amazon was not seeking penal directions against the Future Group. He suggested the court could delete the penal directions in the impugned order while maintaining the effectiveness of the EA's order.

Appearing for Amazon, another senior advocate Aspi Chinoy submitted that the process adopted by the Future Group was to undermine and defeat the proceedings of the arbitration.

It had disregarded the order and proceeded with the scheme. FRL filed collateral suits in the Delhi High Court stating that they were not a party to the agreement between Amazon and FCPL.

He argued that the High Court's order was only to refuse the injunction. The rest were just observations, which surely did not give them a license that they were not bound by the EA's order and flagrantly disregard it.

Earlier, in March 2021, a single-judge bench of Justice J R Midha had directed for attachment of property of Future Group and their promoters including Kishore Biyani. He also directed them to file additional affidavits indicating the details of their assets and property for violation of the emergency award.

The single-judge bench had also imposed a fine of ₹ 20 lakhs on FRL for raising an untenable plea of nullity against the award.

The court directed the fine to be deposited in the Prime Minister Cares Fund (for Covid) to be used for the vaccination of senior citizens belonging to the below poverty line (BPL) group.

BOMBAY HIGH COURT

BOMBAY HIGH COURT DIRECTS SPICEJET NO NEW CONTRACT WORKERS

These directions are a result of a petition filed by SpiceJet to challenge an Industrial Tribunal order directing the aviation company to continue the employment of 463 contractual employees.

SpiceJet has been ordered by the Bombay High Court to maintain status quo and does not have to hire any new contractual employees until February 8, 2022 when they will be able to challenge a decision made by the Industrial Tribunal. [The Chairman & Managing Director of Spice Jet Ltd. & Anr. v. India Spice Jet Staff & Employees Association].

SpiceJet's management had been told to reinstate 463 contractual workers by the Industrial Tribunal.

According to SpiceJet, their contract was set to expire on December 31, 2021.

In their statement, they said that COVID had affected the aviation industry, affecting the company's financial conditions, and they were struggling to survive.

According to the opposing side, since these employees were employed on a fixed-term basis that expired, they were covered by Section 2(oo)(bb) of the Industrial Disputes Act, 1947.

The retrenchment of a workman who is terminated as a result of non-renewal of his or her contract of employment is excluded from the application of section 2(oo)(bb).

The defendants have been employed, despite being on contracts of service, for tenures of 24 months under each contract, for about 8-9 years, according to Justice Ravindra V Ghuge. Therefore Section 2(oo)(bb) of the Industrial Disputes Act is not applicable.

According to the Court, "In so far as the management's contention that Section 2(oo)(bb) of the Industrial Disputes Act, 1947 should apply to these workers, I fear that section 2(oo)(bb) would be meaningless for workers who have been working under contracts of service for 24 months, under a contract of service for about 8-9 years."

Specifically, the Court ordered that no new contract employees or personnel be deployed and that the status quo be maintained.

A Court of Appeals order clarified that the staff and employee association should not attempt to "precipitate proceedings by filing an application for immediate execution of the tribunal's order".

A strike notice was served by the India SpiceJet Staff & Employees Association in June 2021, causing the dispute.

As a result of the notice, the conciliation officer clarified that the service of both individuals would automatically end on the basis of the terms of their appointment letters and not on the grounds of their termination.

In the meantime, the Union brought the issue before the High Court, which instructed them to contact the Central Government Industrial Tribunal to resolve the issue.

As part of the union's interim request, the tribunal ordered SpiceJet to retain its 493 employees,

including the ground-handling employees in addition to the 493 names recorded in the list of employees.

SpiceJet challenged the order before the High Court.

The Court set February 8, 2022, as the date for hearing the petition after hearing both sides for some time.

For this reason, Justice Ghuge deemed it appropriate for SpiceJet to send an offer of work to a list of its contractual employees, those who are considered to be fixed-term employees.

Spice Jet management was represented by Advocates Mahesh Shukla and Niraj Prajapati.

The association was represented by Advocate Jai Prakash Sawant.

BOMBAY HIGH COURT HOLDS DRAT'S ORDER

It is a setback for Nirvan Birla, the son of business tycoon Yash Birla.

The Bombay High Court has stayed the order passed by the Debt Recovery Tribunal (DRT), Mumbai against Kotak Mahindra Bank.

The DRT had directed that symbolic possession of property mortgaged to the bank be handed over to Yash Birla's son Nirvan Birla.

A bench headed by Chief Justice Dipankar Datta stayed the order in view of the fact that the Debt Recovery Appellate Tribunal (DRAT) was not functional due to the post of the chairperson lying vacant. It, however, said that once the post was filled, the bank would have to pursue its appeal before DRAT.

The case pertained to Yash Birla, who took a home loan in 2012 from Kotak Mahindra Bank (earlier known as ING Vysya) for a property situated in Kemps Corner, Mumbai. On default in repayment of the loan, the bank took measures under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002 for symbolic possession of the property.

In 2015, Nirvan approached the DRT challenging the right of the bank, the secured creditor, to create a mortgage of the property.

By way of its November 2021 order, DRT allowed Nirvan's application and directed Kotak to restore the possession to Nirvan to the extent of his share. Aggrieved, the bank approached the high court with a writ petition challenging the order.

Chief Justice Dipankar Datta

Appearing for Kotak, senior advocate Janak Dwarkadas argued that since the position of the chairperson at DRAT was vacant, the bank was compelled to approach the high court directly.

The chief justice advised Kotak, "The position may be vacant, but an appeal can still be filed. We must be satisfied that the appellate remedy has been pursued."

Accordingly, Kotak informed the court that the appeal had been filed and sought a hearing of the writ petition. Dwarkadas argued, "The DRT ventured into an unknown territory by dealing with the question of the title of the property in question." He pointed out that the bank had a registered mortgage deed with Yash Birla. But that was overlooked by DRT.

Nirvan had also filed a civil suit that was pending in Mumbai's Civil Court since 2015.

He had sought that the share certificates of the property be transferred in his name.

The bench held that in view of the Supreme Court's directions, they were bound to entertain the present petition. It maintained that Kotak had made "an arguable issue," entitling them to ad-interim relief.

The case has been listed for hearing on 17 February.

While Vikram Trivedi (managing partner) and Sachin Chandarana (partner) of Manilal Kher Ambalal & Co briefed Dwarkadas, TN Tripathi & Co's advocates Rafeeq Peermohindeen and Kalyani Wagle appeared for Nirvan Birla.

BOMBAY HIGH COURT RULES: RELEASE TO VODAFONE IDEA, SIMPLE CHANGE OF OUTLOOK OF THE AO CAN'T BE REASON TO REVIVE VALUATION

Vodafone Idea's big relief, the Bombay High Court held that simple change of AO's views cannot be the reason to renew valuation.

Issued under Section 148 of the Income Tax Act 1961 for A.Y.-2013-2014, the Petitioner, Vodafone Idea Ltd. has issued the impugning notice. It was also for quashing an order on 5th December 2019 passed by respondent disposing of the objections. It was filed by petitioner against initiation of reassessment proceedings for A.Y.-2013-2014.

Under Section 115JB of the Act, A.Y. 2013-2014 petitioner filed return of income on 30th November 2013 declaring total income at loss under normal provisions and ₹ 273 crores. As shown in original return of income, the revised return of income was also filed declaring income. Under Section 143(3) of the Act, the assessment was completed on 30th December 2016. It determines total income under normal provisions and under Section 115Jb of the Act.

On the available documents and submissions before the Assessing Officer, before passing of the original assessment order, the coram of Justice R.N. Laddha and Justice K.R. Shriram held that the entire basis for proposing to reopen, as can be seen from the reasons. In fact, it is also recorded that the same issue was considered by the earlier Assessing Officer during the assessment proceedings.

The Assessing Officer notes that the assessee had made submissions on these items before

but still comments that income on expenses to tax has escaped because in his opinion certain amounts are required to be added back in profit and loss account and certain amounts should not have been rejected. One view is conclusively taken by the Assessing Officer where on consideration of material on record. It would not be open to reopen the assessment based on the very same material with a view to take another opinion.

"We are contented that the petitioner had truly and totally revealed all the material facts necessary for the purpose of assessment. Not only material facts were disclosed by the petitioner truly and fully but they were sensibly inspected and figures of income and deduction were revised carefully by the Assessing Officer.

In the reasons for reopening, there is not even a whisper as to what was not disclosed.

The court said, "In our view, this is not a case where the assessment is required to be reopened on the rational belief that income had escaped assessment on account of failure of the assessee to disclose truly and fully all material facts that were necessary for computation of income but this is a case wherein the valuation is sought to be reopened on account of change of opinion of the Assessing Officer."

BOMBAY HIGH COURT'S NOTICE TO EX-CHIEF MINISTER

Devendra Fadnavis

It was claimed that Devendra Fadnavis misused his position to transfer the accounts of police officials

The Nagpur Bench of the Bombay High Court issued a fresh notice to the former chief minister of Maharashtra Devendra Fadnavis on public interest litigation (PIL). The PIL alleged irregularities in the transfer of bank accounts of police officials from a nationalized bank to a private bank where Fadnavis' wife Amruta Fadnavis occupied a senior position.

The plea was filed in 2019 by a Nagpur-based social worker. Subsequently, the court had issued a notice to Fadnavis, who was then the chief minister. However, due to the change in his address after his tenure ended, the notice could not be served upon him.

Hence the bench of Justice S B Shukre and Justice A L Pansare issued him a fresh notice. The court also issued a notice to the newly-arraigned respondents, the State Bank of India and the Axis Bank.

The plea was filed after the petitioner discovered that the Fadnavis-led government's decision to transfer all bank accounts of police officials and beneficiaries of the Sanjay Gandhi Niradhar Yojana to Axis Bank. It was not only a private bank, but also where Amruta served as the vice-president.

Under the Right to Information Act (RTI), the PIL stated that the circular issued by the Fadnavis' government through the state home department in 2017, promoted the private bank and led to a loss for the nationalized bank.

"The Chief Minister of Maharashtra State used his official position to obtain the pecuniary advantage of Amruta Fadnavis without any public interest," the plea stated. The petitioner also claimed it was a fit case for enquiry by the Central Bureau of Investigation under the Prevention of Corruption Act.

DELHI HIGH COURT

DELHI HIGH COURT DIRECTS ICAI TO FRAME A POLICY ON CRIMINAL CASES

The profession of the chartered accountant requires a high standard of integrity and is considered noble

The Delhi High Court has directed the Institute of Chartered Accountants of India (ICAI) to frame a policy that mandates chartered accountants (CAs) to disclose criminal cases against them.

Suggesting that such a policy was necessary, Justice Pratibha M Singh told ICAI not to stay in the dark about criminal proceedings against registered members. The mechanism of the policy would lead to the CAs revealing such cases or convictions against them on a periodic basis.

The court was dealing with a petition filed by a CA, Mohit Bansal, challenging the show-cause notice issued to him under a section of the Chartered Accountants Act regarding his conviction for assaulting a woman in 2001. The section dealt with offenses involving 'moral turpitude' and stipulated that if a person was convicted, his name could be barred from the ICAI register. It was argued that though he was first convicted of gang rape, in 2010, the high court had reduced it to assault.

However, this fact was kept hidden from the ICAI. The CA continued his practice for over a decade until a show-cause notice was issued to him in 2018.

Justice Singh held that certain professions and services required a high standard of integrity and were considered 'noble'. The CA fell in that category.

The court, therefore, upheld the show-cause notice, observing, "The petitioner practiced for almost 12 years by the time the notice was issued by the ICAI. Ideally, ICAI ought to have had adequate checks at the time of the registration. However, the fact that the conviction of the petitioner may have not come to its attention for over 10 years, does not in any manner, bar ICAI from taking action, especially, when the offense involved is of a grave and serious nature."

Justice Pratibha M Singh

Justice Singh added that although a bare reading of a sub-section of the Act suggested that the Central government would have the power to remove the disability even in offense of 'moral turpitude', in the opinion of the court such powers would be contrary to the statute as well as settled judicial precedents. A person could continue on the register of the ICAI only if he was granted a pardon.

Senior advocate Ramji Srinivasan, along with advocates Pooja Saigal, Simrat S Pasay, Chaitanya Pandey, Farman Ali and Athar Raza Farooquei appeared for the respondents.

DELHI HIGH COURT RULES IN FAVOR OF TATA GROUP ON AIR INDIA

Subramaniam Swamy

Subramaniam Swamy had filed a petition maintaining that the bid process for the national airline was rigged

The Delhi High Court has held that the bidding process for disinvestment of then national airline, Air India was not rigged in favor of the Tata Group.

A division bench of Chief Justice D N Patel and Justice Jyoti Singh observed that the bidding process saw keen competition with seven Expression of Interests and two bidders. It cannot be said that the process was tailor-made to facilitate the Talace Private Limited, a wholly-owned subsidiary of Tata Sons, which emerged as the highest bidder.

It, thus, dismissed the petition filed by Bharatiya Janata Party's Member of Parliament Subramanian Swamy. The MP sought quashing of the disinvestment process on the ground that the bid process was arbitrary, corrupt, against public interest and rigged in favor of the Tata Group. He said it was a planned and collusive strategy.

The order stated, that acquiring Air India by entertaining a bid on behalf of SpiceJet was also devoid of merit, mainly for the reason that the disinvestment process saw keen competition.

The court noted that SpiceJet was not the second bidder. Rather, a consortium in which the lead member was Ajay Singh, owner of SpiceJet, submitted the financial bid. However, he had participated in his individual capacity.

It added, "There is no material on record which would support the allegations of the petitioner that the respondent colluded with Singh's consortium or was aware of the consortium's bidding strategy."

The bench observed that a reserve price was fixed after the receipt of the sealed financial bids for the transaction, based on valuation using methodologies, as per the established process.

It held that Air India disinvestment was a policy decision made by the Central government after due deliberations at various levels. It was not open to interference in judicial review, in the exercise of jurisdiction under the Indian Constitution.

United States

IT'S TIME FOR BIDEN TO STAND UP TO BIG TECH

Ben Clements, Chairman and Senior Legal Advisor at Free Speech for People, look into Google's insistence that Jonathan Kanter, recently confirmed Assistant Attorney General for Antitrust, recuse himself from investigating Google's anti-competitive conduct...

Antitrust attorney Jonathan Kanter was recently confirmed by the Senate to fill the position of Assistant Attorney General for the Department of Justice Antitrust Division. Google, a company with a history of anti-competitive conduct that has run afoul of state, federal, and international regulators, promptly requested Kanter recuse himself from the Justice Department's investigation and litigation against Google, based on Kanter's statements in the past criticizing and taking action against Google's anti-competitive behavior. Kanter has the necessary background to lead antitrust actions against Google, and the government ethics law does not require him to be disqualified from serving as an antitrust official. It is an obvious attempt to evade regulatory oversight that Google is requesting recusal and it should be rejected.

The government ethics regulations stipulate three reasons to recuse an official: a personal conflict of interest; a relationship with another party to the case (for example, a former employer) that might raise suspicions of a conflict; or other factors that might cause a reasonable person to question the official's impartiality.

Two of the three are clearly irrelevant. Google has neither suggested that Kanter (or any of his family members, business partners, or organizations he represents) has some kind of financial interest in the Antitrust Division's case against Google nor suggested that he might have such interest given his no prior association with either the United States or Google.

Rather, Google argues that, in view of the circumstances that would make reasonable persons question Kanter's impartiality, the catch-all provision should be invoked. Google bases this reasoning on Kanter's history of public criticism of Google's monopolistic practices, in addition to his work in the private sector representing companies whose interests have been adversely affected by Google's practices and advocating government action against Google. Google claims Kanter should not oversee the government's lawsuit against Google because Kanter's former clients may benefit from the suite - overlooking the fact that most Americans and countless businesses benefit from antitrust enforcement against Google.

Google argues that the antitrust attorney's past legal actions and criticism of a powerful global monopoly disqualify him from representing the government's interests against that monopoly, which disqualifies the most obvious candidates for the job. If recusals were required here, it would set an alarming precedent by opening up the door for corporations to disqualify any number of qualified advocates from serving in high-ranking positions at the Justice Department. When the head of the Environment and Natural Resources Division had previously criticized or sued Chevron for pollution, would he have to step back from a case involving an oil spill from a Chevron pipeline? As an Assistant Attorney General for civil rights with experience combating voter suppression efforts, would

she be required to recuse herself from a case regarding an ongoing effort to restrict voting rights in that state?

The goal of Google's request is to usurp the policy authority of the President, the United States Senate and the American people, by reining in the monopolies of giant tech companies. However, Google's request is plagued with an even bigger issue: it asks Justice Department officials to usurp the policy powers of the President, the Senate and the American people. Kanter's experience and expertise in challenging Google and other Big Tech companies did not dissuade and prevent the President and the Senate from nominating and confirming Kanter to lead the Antitrust Division.

On the contrary, his experience and expertise have led to him being promoted to this position. The Senate's antitrust subcommittee chair, Senator Amy Klobuchar, observed that Kanter is an ideal choice for keeping the Antitrust Division under his watch, due to his "deep legal experience and aggressive advocacy record." If ethics officials conclude that his experience and expertise make him qualified to serve in this role simultaneously render him ineligible to participate in the Division's most consequential and important cases, it would violate our elected officials' wishes and undermine the government's ability to effectively enforce antitrust laws.

Ethics regulations acknowledge this fact in their own texts and don't intend to interfere with the government's or public's interests in enforcing the law. In particular, the regulations stipulate that even if an official's participation in a matter exists a conflict of interest, the government's interest in the employee's participation outweighs the concern that a reasonable employee would question the integrity of the agency's programs and operations.

Kanter would benefit from a waiver authorizing him to participate in the case even if there were a reasonable question as to his impartiality in United States v. Google. It appears that the government is interested in Kanter's involvement in an important case, such as United States v. Google, as demonstrated by President Biden's nomination of Kanter and the Senate's overwhelming confirmation vote of him.

In the past, the Department has frequently allowed officials to participate in cases in which their impartiality was questioned despite having no "covered relationship." For instance, Vanita Gupta and Matthew Axelrod of the Civil Rights Division, as well as Counselor Bryan Boynton of the Attorney General's Office, each received waivers allowing them to work on cases in which their former employers were representing parties. This time around, Kanter is less of an issue because the case for his recusal is far weaker and the government is just as interested in his participation as it was in the previous cases.

One of the largest sectors of the American economy must be protected from being controlled by a few big tech corporations under the Biden administration. As Kanter's expertise in antitrust and the tech sector, in particular, will prove vital in holding today's monopolies accountable, like Google, the Antitrust Division will now be able to effectively enforce antitrust law. Kanter's recusal from testimony should not be considered by the Department of Justice based on Google's baseless and self-serving request.

Ben Clements is a lawyer, author and advocate for political and governmental reforms. He is currently the deputy chairman and senior legal advisor at Free Speech for People, a non-profit organization dedicated to democracy and combating corruption and corporate abuses.

US CRYPTO EXCHANGE APPOINTS EX-FBI SPECIAL AGENT

Tom Davis, certified fraud examiner, formerly with IBM's North America business unit, has joined Coinme.

As the crypto market rapidly evolves, Coinme, a Seattle-based crypto currency cash exchange, has integrated a former FBI Special Agent as its general counsel and corporate secretary, bolstering its compliance expertise in the market.

The company has hired Tom Davis from IBM's North America Business Unit, where he worked as a financial crime insight and regulatory compliance specialist. His addition, according to the company, will help protect its compliance with different regulation policies as it expands in the United States and abroad.

By partnering with payment companies like Coinstar and MoneyGram, Coinme says it has grown to include 'thousands' of physical locations across 48 states. It was co-founded in 2014 by Michael Smyers and Neil Berquist. A new CEO has been selected appointing Berquist as a replacement for Smyers, who left the company in 2020.

Berquist said that the company has focused on doing things the right away from the beginning and has secured the first state license for cash-to-crypto technology in the United States.

"Tom's addition fits right into our commitment to providing secure and trustworthy access to the world's crypto market at a time when global regulations are rapidly evolving," he said.

Davis specializes in fraud investigations, financial crime, and regulatory compliance matters with more than 25 years of legal

Tom Davis

experience. In 2002, Davis became a certified fraud examiner.

Davis served as the vice president of operations, compliance and fraud prevention for GCG, the third-largest party administrator in the United States, before joining IBM. He has served earlier in the accounting profession as a partner-in-charge of forensic and investigative services at the Seattle-based accounting firm Moss Adams and general counsel and secretary for Airbiquity, a start-up focused on automotive telematics. In Seattle, Davis was assigned to the white collar crime squad while employed by the FBI.

Those are among the things that make Coinme a fast-growing company in the Pacific Northwest, and Davis says he is delighted to work for a company that is at a critical juncture in its history. He continues: "I look forward to working with the team to make sure Coinme continues to grow and succeed."

US LAWMAKERS INTRODUCE A PRIVACY BILL

Supported by public interest organizations, it could reform the technology industry

Senator Cory Booker, along with Congresswomen Jan Schakowsky and Anna G Eshoo, has introduced the Banning Surveillance Advertising Act. It prohibits the use of personal data by advertising networks and facilitators from targeting advertisements to users. The exception has been made to allow broad location-based targeting.

In her statement, Eshoo described the importance of the law. "The 'surveillance advertising' business model is premised on the unseemly collection and hoarding of personal data to enable ad targeting. This pernicious practice allows online platforms to chase user engagement at great cost to our society, and fuels misinformation, discrimination, voter suppression, privacy abuses, and other harms. The surveillance advertising business model is broken," it read.

Data about the individual or connected devices such as contents of communications, browsing history, online activity and customer lists cannot be used by advertisers and ad platforms for targeted advertising under the new bill.

Advertisers are also prohibited from targeting advertising based on protected class information, such as race, gender, and religion, as well as

personal data purchased from data brokers. However, advertisements carefully tailored to online content, as with contextual advertising, would be permitted.

The bill provides authority to the Federal Trade Commission and individual state attorney generals to enforce the new ad targeting regulations. Additionally, it enables individual users to sue platforms (such as Meta and Google) for violating the law, awarding up to $5,000 in damages for each violation.

The law is supported by public interest organizations, academics, and companies with privacy-preserving business models such as Proton and DuckDuckGo.

JUDGE JAMES BOASBERG ALLOWS FTC TO SUE META PLATFORMS

The Company is accused of illegally maintaining its personal social network monopoly through anti-competitive conduct.

US District Judge James Boasberg of the District Court of Colombia has denied a motion of dismissal by technology conglomerate Meta Platforms (previously Facebook). It was against the Federal Trade Commission's (FTC) lawsuit, which sued the company for illegally maintaining its personal social network (PSN) monopoly through anti-competitive conduct.

FTC had filed an amended complaint after Judge Boasberg dismissed the complaint last year. The order was issued without prejudice and allowed the agency to reinstate the suit by amending its complaint.

The Commission retained its core argument. It alleged that the monopoly was maintained by the acquisition of potential competitors, including Instagram and WhatsApp. The company had implemented policies preventing inter-operability between the Facebook app and other apps, which were viewed as "nascent threats."

The FTC, this time, provided more robust and detailed facts for its allegations, clearing the bar for pleading.

Judge Boasberg allowed the allegations of illegal monopoly, barriers to market entry, and anticompetitive conduct through acquisitions of potential competitors. However, he did not allow allegations around inter-operability, since the company had abandoned the policy in 2018.

Meta responded to the decision in a statement, "The decision narrows the scope of the FTC's case by rejecting claims about our platform policies. It also acknowledges that the agency faces a 'tall task' proving its case regarding two acquisitions it cleared years ago...

"We are confident that the evidence will reveal the fundamental weakness of the claims. Our investments in Instagram and WhatsApp transformed them into what they are today. They have been good for competition, and good for the people and businesses that choose to use our products."

US TRADE COMMISSION DISCOVERS GOOGLE BREACHED AUDIO PATENTS

The copyrights cover technology-enabling features like synchronous volume adjustment

The US International Trade Commission (USITC) has observed that Google had infringed on audio patents held by Sonos, a domestic developer of audio products. The ruling could impact Google's device imports. But the technology giant played smart and has already submitted redesigns of the controversial technology.

The patents cover technology-enabling features such as synchronous volume adjustment across multiple devices.

The finding vindicates Sonos's claim that Google violated the Smoot-Hawley Tariff Act. The Act prohibits the importation of articles that infringe on a US patent or copyright. The Act provides USITC to make determinations of infringement.

To uphold the claim of infringement, Sonos had to prove that Google's product was both technologically similar to the proprietary designs and that there had been a significant investment by Sonos in those designs.

Finding the requirements satisfactory, USITC ordered a halt to the importation of the products containing those features. It issued a cease-and-desist order against Google. The USITC also imposed a financial penalty against the company.

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United Kingdom

LINKLATERS ALLOTS 'BRAND PRIMACY' TO CREATEIQ

A UK magic circle firm plans to build its contract automation technology from the ground up "as both a brand and a product"

CreateiQ, the contract automation platform launched by Linklaters, has been gaining market share from the firm's longstanding in-house tech start up, Nakhoda. The move represents a large shift for the UK-based firm as it grows the product after its launch in February 2021.

After the departure of Nakhoda founder and CEO Partha Mudgil in February 2020, CEO Shilpa Bhandarkar, who was previously the CEO of the company, will become CEO of CreateiQ, an application developed by the Nakhoda team.

The firm's marketing is focused on CreateiQ, which seeks to automate contract negotiating for in-house legal teams, while she also heads up Nakhoda, which remains a cross-functional group developing new software products.

"Around 90 percent of my day-to-day interaction with clients is related to CreateiQ, so it seemed sensible to focus on CreateiQ as both a brand and the product as well," said she.

CreateiQ, which has just completed its first annual report, has been used by nearly 30 companies in the Fortune 500 and six of the top ten banks, based on assets. Approximately 20 people work at the company, including software developers, product managers and marketers.

One of the company's newest employees is YouTube vlogger Eve Cornwell, who is now a full-time product manager at CreateiQ after leaving the position of a junior lawyer early in January 2022. "I think this officially makes me a woman in STEM,'' Cornwell wrote on LinkedIn, who has 374,000 YouTube subscribers.

Before joining Nakhoda, Bhandarkar was Linklaters' global head of innovation for

almost two years. She began her legal career in 2003 and stayed for three years at the firm before re-joining in 2008 as chief operating officer for India, and then as director, business manager for the firm's Africa network in 2015.

In 2018, she returned to Linklaters for the second time after serving as legal network director for London-based legal tech company Lexoo.

Linklaters and Mudgil won the case against Nakhoda last summer after successfully defending a claim of sexual harassment brought by a former paralegal who was on a three-month contract at the start-up.

The case was heard by a London employment tribunal, and all of the claims were dismissed.

A new global head of practice innovation, who will lead the team of practice innovation lawyers, was also appointed by Linklaters earlier this month. This team will focus on improving efficiency and the quality of client service.

ROYDS COMPLETES MERGER TALKS WITH DERRICK

By combined revenue, the firms will rank among the top 70 law firms in the United Kingdom.

With the successful completion of merger talks, Royds Withy King and Goodman Derrick have agreed to merge by the end of May 2022 thus taking them into the top 70 firms in the UK by revenue.

Upon its establishment in May, RWK Goodman will house approximately 360 lawyers working from Royds Withy King's eight regional offices in the Southwest, Thames Valley and London and will have an annual turnover exceeding £50m.

Following the merger, Goodman Derrick's City office is expected to close and its employees will move to Royds Withy King's office at 69 Carter Lane in London.

The combined firm will have about 30 percent of its lawyers based in London, according to a statement.

Graham Street, Royds Withy King's managing partner, describes the deal as a "significant step forward" for the two firms.

He says it allows the firm to continue ranking among the top 100 law firms in the UK while also 'significantly strengthening' its corporate and real estate practices.

There are about 480 people working for the Bath-based firm, including 65 partners, and they provide guidance in areas like corporate, commercial, private client and family.

Managing partner Street will continue leading the combined firm as the firm's managing partner, while Edward Hoare, Goodman Derrick's senior partner and Mark Jones, its chief operating officer, will join the executive committee.

"It was clear at inception that both the firms shared an alike culture and emphasized on outstanding client service," said Hoare.

As part of the merger, both firms now offer a wide range of specialist services, which will be of benefit to both firms' clients and create growth and development opportunities for both."

At Goodman Derrick, there are 90 employees, including 20 partners. Corporate and corporate transactions, employment law, real estate, construction, dispute resolution and wealth and family law make up the firm's core practice areas.

In a study just published last week, nearly half of UK law firms are considering mergers and acquisitions to expand faster than organic growth allows, with 23 percent already in negotiations and 57 percent actively in the process of seeking a merger.

In an announcement released earlier this month, the top 45 UK firm Weightmans announced plans to merge with Radcliffes LeBrasseur by the end of March.

As a result of this acquisition, Mills & Reeve will have more than 225 partners and 1,400 professionals.

Its combined revenue will be around £120m, placing it in the same group as top 40 UK firms like Mills & Reeve and Slater & Gordon.

In November 2021, Clyde & Co, a top 50 law firms in the UK ranking and BLM admitted that they were in talks about merging. This would combine Clyde's 2440 legal professionals with BLM's 790 lawyers, creating a firm with revenue of around £735 million.

Europe

INTEL WINS APPEAL IN EUROPEAN GENERAL COURT

The verdict offers a glimmer of hope to other tech giants embroiled in such cases.

In a major setback for the European Union (EU) antitrust regulators, the European General Court has overturned the €1.06 billion ($1.2 billion) fine.

The penalty was imposed on Intel almost 13 years ago for abuse of market dominance and stifling competition.

In 2009, the European Commission found that the US chipmaker had abused its position in the market for x86 processors. It had engaged in anti-competitive conduct by offering rebates to Dell, Lenovo, Hewlett-Packard (HP), and NEC, conditional on them purchasing all or most of their chips from Intel.

Accordingly, the Commission had imposed a hefty fine on Intel. The decision of the Commission was brought before the General Court by Intel, but it was dismissed in 2014. However, in 2017, on an appeal by Intel, the Court of Justice set aside the 2014 judgment and referred the matter to be heard again by the General Court.

The General Court in Luxembourg criticized the Commission's analysis, stating that it was

incomplete and "does not make it possible to establish to the requisite legal standard that the rebates at issue were capable of having, or likely to have (an) anti-competitive effect."

The Court ruled, "It annuls in its entirety the article of the contested decision, which imposes on Intel a fine of €1.06 billion in respect of the infringement found."

The judgment of the Court is appealable before the Court of Justice. But the Commission has yet to decide whether it wants to proceed with an appeal.

The verdict offers a glimmer of hope to other tech giants including Apple, Alphabet's Google, Meta, and Amazon, which have, of late, been caught in EU regulator's crosshairs.

United Arab Emirates

UAE AUTHORITY EXTENDS GRACE PERIOD FOR TAX REGISTRANTS

الهيئة الاتحادية للضرائب
FEDERAL TAX AUTHORITY

The decision will enhance the ability of businesses to contribute to the growth of the national economy.

The United Arab Emirates (UAE) tax authority has extended the grace period for tax registrants to get their penalties re-determined for violating tax laws until December 2022. The earlier deadline was 31 December 2021.

The Federal Tax Authority (FTA) clarified that tax registrants who had not met the necessary conditions to benefit from the administrative penalties' re-determination by the previous deadline, could now do so by ensuring they met the conditions by this year-end.

Highlighting the eligibility of the tax registrants, it added that firstly, the administrative penalty should have been imposed before 28 June 2021, and the amount due was not settled in full before that date. Secondly, the tax registrant has settled all payable taxes by 31 December 2022. Thirdly, the tax registrant has also settled 30 per cent of total unpaid administrative penalties no later than 31 December 2022.

The FTA said that should the registrant meet these conditions, the administrative penalties would be re-determined to equal 30 per cent of the total unpaid penalties.

Canada

AMAZON SUED BY TORNADO VICTIM'S FAMILY

Twenty-six-year-old Austin McEwen was killed when an EF-3 tornado struck the Amazon facility in Illinois.

The family of a former-Amazon worker has filed a wrongful death lawsuit against Amazon in Illinois state court. The lawsuit alleges that Amazon failed to provide workers with proper protection or warning before a tornado struck a company facility, killing six persons.

The lawsuit was filed on behalf of the 26-year-old victim Austin McEwen, who was killed in December last when an EF-3 tornado struck the Edwardsville, Illinois Amazon facility. It was one in a string of deadly tornadoes that struck the Midwest.

Responding to the lawsuit, an Amazon spokesperson said, "Severe weather watches are common in this part of the country and, while precautions are taken, these are not the cause for most businesses to close down. We believe our team did the right thing as soon as a warning was issued."

At the time of the incident, McEwen worked as an independent contractor running deliveries for Amazon. The workers were required to stay at the facility to fulfill the 'peak season' orders ahead of the holidays.

According to the lawsuit, Amazon knew or should have known a tornado could potentially strike the Edwardsville facility. But it was late when the "take shelter now" tornado warning

was issued for the Edwardsville area. The complaint alleged that Amazon had instructed the workers to take shelter in a restroom.

"They had people working up to the point of no return," said Jack Casciato, the McEwens' lawyer.

The defendants in the lawsuit are Amazon's (corporation and limited liability) companies; the construction company that built the Edwardsville facility; and the facility developer.

The McEwens have sought $50,000 from each defendant.

While the Occupational Safety and Health Administration opened an investigation into the incident, it is the first known legal action against Amazon resulting from the building collapse.


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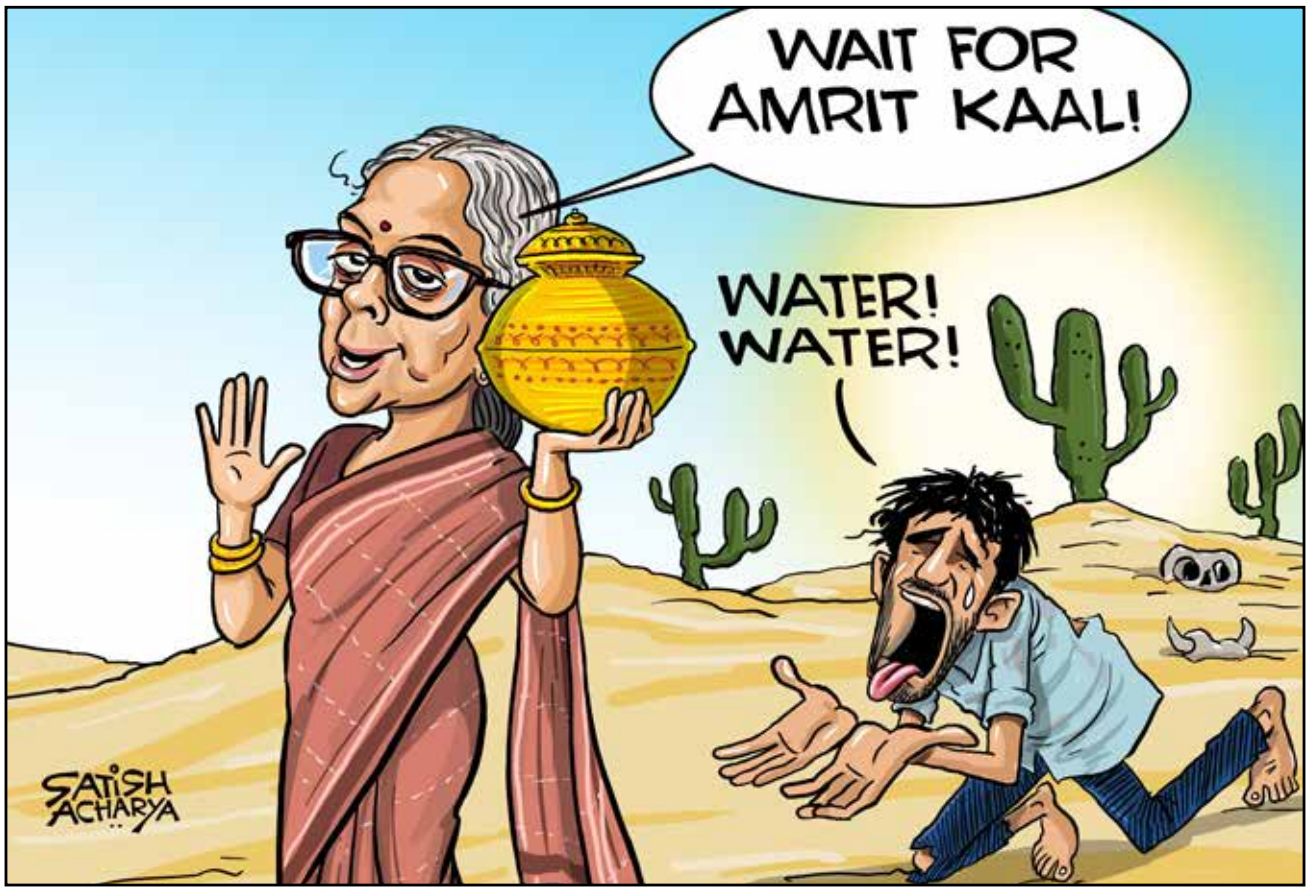
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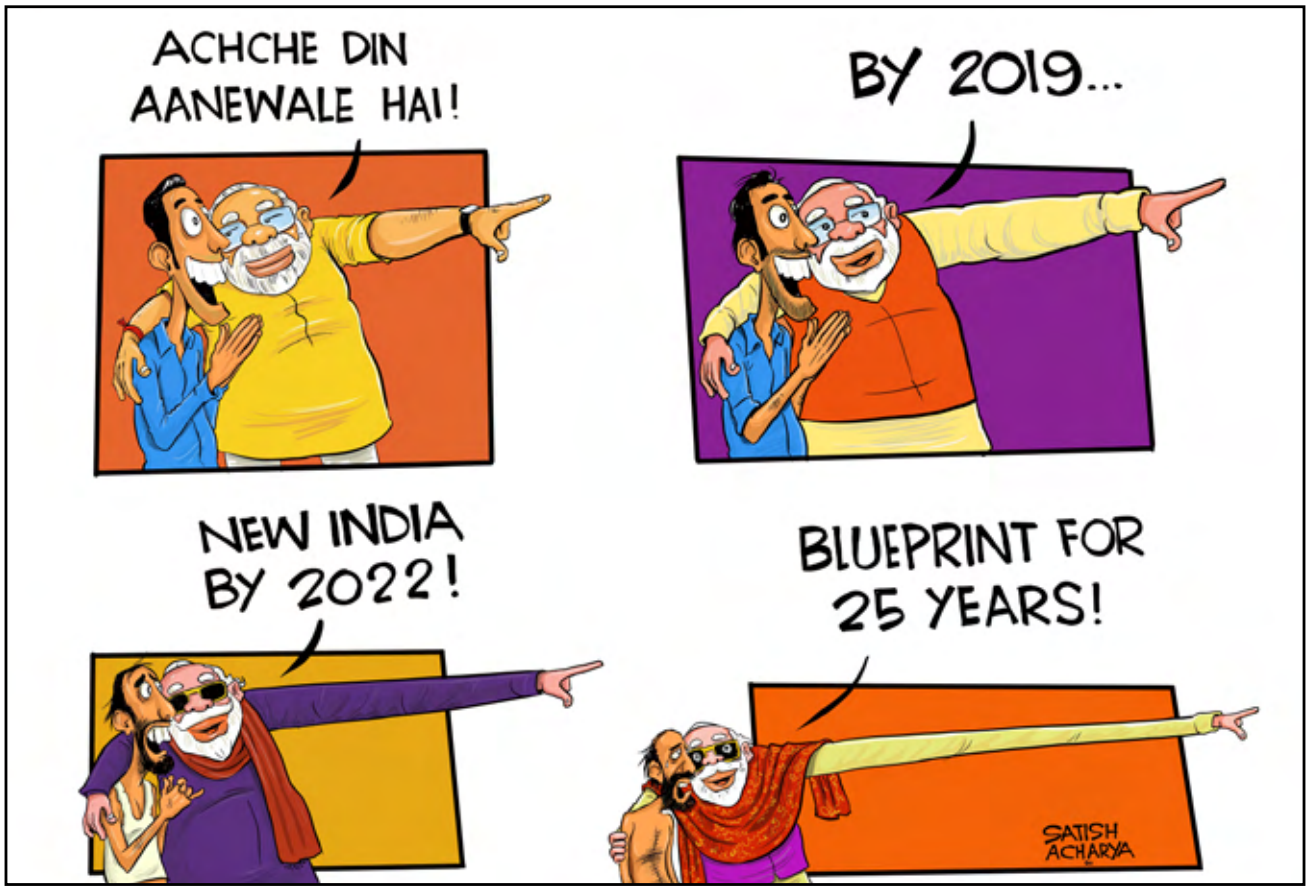
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