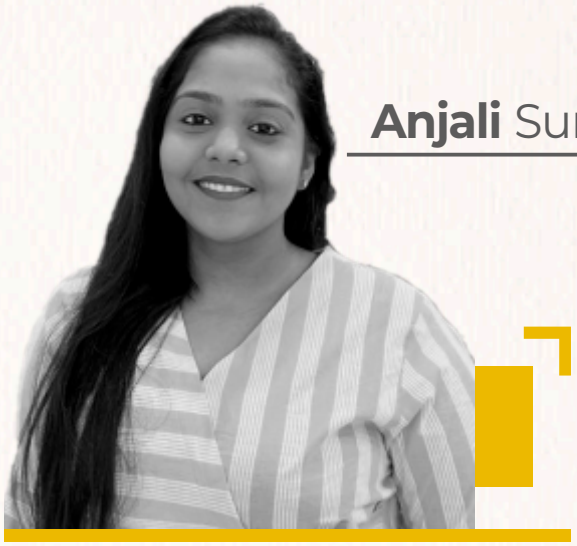


Anjali Surana

Fallen Crown of Thorns in Vast Ocean

Prologue:

Starfish is known as the Crown of thorns, likewise Kingfisher once owned the crown but the one who wants to wear a crown must bear the weight. Unfortunately, Kingfisher could not lift up its business, hence the crown fell. A good healthy body is worth more a crown in gold. "ILL FINANCIAL HEALTH" resulted in the failure of Kingfisher.

Globalization and liberalization gave immense opportunities to the Indian entrepreneurs with strong competition across the globe. Few businesses touched the sky and few fell. How did the Kingdom of Kingfisher fall?

One of the early movers who came with a bang was VIJAY MALLYA who inherited a readymade empire in the year 1983.Unlike Mallya, his Father MR.Vittal Mallya was simple and hardworking man who worked in United Breweries which was started by Thomas Leishman , Mr Vittal Mallya started to acquire stake from UB group and became the Chairman in 1950.He started expanding the UB group in various sectors like polymer, batteries, pharma, chemicals .With great efforts all the sectors were making enough profits.

The whole Nation shook on the sudden demise of Vittal Mallya and the business was inherited by Vijay Mallya. He was a 28-year-old carefree adult who was completely clueless about business, with time and experience he became a brilliant business tycoon with astonishing name and fame. He tried different businesses and realized that real success and potential was in liquor business. The company made crazy profits and expanded its business in almost 52 countries.

The Contraction Phase:

Every business has to pedal in the operational cycle of the business. The real threat of Kingfisher was when there was complete ban on alcohol sale in few States of India. For example, when Sri Narendra Modi emerged as a political force, he put up a complete ban on sale of alcohol in Gujarat and the people residing there accepted and appreciated too.

Real blow hit the Mallya's empire when the Indian Government banned the advertisement on Television exactly at that period when Mallya wanted to expand his business. But" Mallya being Mallya" became the pioneer of advertising by putting up advertisements like Kingfisher Soda which recaptured the psyche of its customers what exactly Kingfisher was known for. It is a kind of Surrogate advertising yet the alcohol industry is

always looked down in India.

Optimistic Mallya :

Being an optimistic businessman he wanted to expand his brand and be a catalyst for change and that's were he sought to launch an airline under the brand name of KINGFISHER which was high on the success of Kingfisher beer and was globally well known brand .It was a bold decision since it was highly risky because airline businesses was going down than soaring high especially country like India were major population is of middle class but Mallya was very clear that key to business success is lay in low fares.

The beginning of the end?

On the 18th birthday of Siddharth Mallya, son of Vijay Mallya ,9th May 2005, Kingfisher airlines was launched. Mallya signed a huge deal with the air bus industries to buy about 12 new planes which costed 240million dollars. Initially the airlines flew 4 flights domestically and within 2 years it flew 104 flights every day. It was the only airline to reach five star . Customers were happy and satisfied and always chose Kingfisher over any other brand. They felt like they were flying in a palace, such lavish their services were! The airline neither had any economy class nor business class, it had "Kingfisher Class". The feedback from customers were tremendously noteworthy since it was very economic with all luxury entertainment, comfort and convenience. It was a resounding business.

Rubbing salt into wounds:

After the great response from India Mr Mallya wanted to expand business to fly overseas. In 2007 Kingfisher Airlines acquired 26% stake in Air Deccan and later increased its stake upto 50%, hence the merger of KINGFISHER AIRLINES and AIR DECCAN. After the merger it was renamed as Kingfisher Red and was known as a low-cost arm of Kingfisher Airlines, In September 2008 it initiated its international operations flying from Bangalore to London. It served in almost 8 countries across Asia and Europe. Kingfisher Airline established itself as a high-class service oriented and a luxury airline within a short span of time.

Don't eat more than you can chew:

The company had a decent turnover yet it was into severe losses since 2005.It reported losses of 1000 crores for consecutively 3 years after its acquisition. The major reason for initial losses was that after the acquisition, the company was at standby for more than 9 months. International market is all about high competition and low margin. During the standby the company hired 40 international pilots who drew Rs12-15lakhs monthly salary. The company also bought few airbuses and air crafts during the standby. By the time the company could start its operations it was in a debt of 4300crores already. Another drawback was the global downturn were the prices of aviation fuel continuously inflated. Mallya never invested his own money for capital. He believed in "CHEAP CAPITAL" that is Bank loans which benefitted business by deducting interest from taxable income. But a harsh reality!

"DEBT IS ONLY CHEAP IF YOU HAVE PROFITABLE BUSINESS,

IT'S THE MOST DANGEROUS IF IT IS DRINKING LOSSES."

Losses at throat

Kingfisher's losses were at throat. We humans as species are unfinished projects. Mallya had zero ethical values and was never in any ethical dilemma if he was doing right or wrong, all he did is right for himself. Back then when he realized things had gone wrong already. The company had no Value systems and corrective measures. Apart from loans the company had severe

mismanagement since the company never had any full-time managing director or a CEO, they kept changing their business strategies by sometimes providing economic services and sometimes providing premium. This created confusion in the minds of customers which made them switch to Indigo and Air India.

"CHANGE TAKEN TOO OFTEN BRINGS NO CHANGE"

They never had any business model or business policy and were doing business blindfolded. It did see a rapid growth but did not see the problems of liquidity and inconsistency. They provided luxury services at low costs and gulped in losses. The company neither had reserve surplus nor cash surplus. The company must have concentrated more on Business model than on Airhostess models. The Global recession made the business even worse which eventually led to lower occupancy and slower ticket sale. The crude prices started hiking, dollar became stronger making the Indian rupee even more weaker.

"ONE NEEDS DEEP POCKETS & LOSS ABSORPTION CAPACITY TO SUSTAIN IN MARKET."

Drowning in loans:

In the year 2009 the Board of Directors passed a resolution and issued Global Depository Receipts to raise equity. The company was in a state, forget profits it never had enough funds to even pay back its interests and debt. Mallya went out to banks and raised loans saying that the company was going through its recession phase and wanted to avail loan for its operational capital. It almost raised loans from 17 Public Sector banks like State Bank of India (1600 crores), IDBI Bank (900 crores), PNB Bank (800 crores), BOI (650 crores), Bank of Baroda (550 crores) and the list goes on. As and how the time passed the debt mountain of Kingfisher reached its peak. The company was failing and the losses were bleeding, it didn't have funds to pay back its interest and debt. Ever wondered why banks couldn't recover the Non-Performing Asset (NPA) created by Kingfisher. The real explanation is the "Ghost Collateral", collaterals which have been pledged but does not exist. Imagine if there is no such value of things you had mortgaged, Kingfisher exactly replicated it, it had mortgaged its trademarks and not physical assets for value of Rs900crores of which the actual worth was just Rs6crores. They also mortgaged the helicopters which was later discovered that both were not in the working condition.

WHOM SHOULD WE BLAME? BANK? or KINGFISHER?

Banks should have physically verified before sanctioning any loan.

How did the King of good time became the fraudster of all time:

Mallya after availing the loan never used the loan for any business purposes or to pay salaries. A wife of an employee also suicided reason being that her husband was not paid for several months. Mallya was least bothered & recklessly transferred the money in 3 accounts and re-rooted to offshore accounts to live life luxuriously. Somewhere it raises the question

"IS COLLATERAL MANDATORY ONLY FOR A COMMAN MAN?"

A farmer puts everything at stake to avail loan for few thousands and if defaulted he's either behind the bars takes his own life (on the other hand)

Mr Mallya hardly gave some collateral and availed loans in crores, defaulted and ran away.

"If you can't repay loan, take more loan and runaway"

Happy realisation

On 12th October 2012 a non bailable warrant was issued against the company for dishonour of cheques. The license was also suspended on the failure to come with a viable or feasible plan to revive the company. He was summoned by special court for economic offence. The DGCA announced 15 aircrafts will be deregistered for default in the payment of lease.

Flood of Plaints and Complaints:

The whole nation turned against Mallya. Everybody is with you when you are on top but the second you fall everyone runs for their own lives and in the instant case so did the banks.

Kingfisher Airlines was declared NPA on account of continuous default of debts of Rs4000crores.

PNB also served notice to Airlines for the non-payment of dues of over Rupees 770crores and was warned that the Airline and the Personal Guarantor would be declared Wilful defaulter for non-payment.

As warned, they were declared wilful defaulters which was challenged in the supreme court by filing Special Leave Petition, the SC denied any relief to the airlines.

On account of non- compliance of Listing Regulations and for not disclosing its financial statements for consecutive 2 quarters.

The MCA also rejected the application for reappointment of Mallya as the MD since he was declared as Wilful defaulter.

CBI raided Mallya's offices in regard to the investigation for default in paying Rs 900crores loan to IDBI bank Ltd and eventually the Kingfisher Airlines went into liquidation.

Money laundering case was also filed against Mallya and was debarred from visiting Abroad.

Why didn't the banks and regulators put pressure on Mallya earlier?

How banks didn't realize the incapacity of Airlines earlier?

Was there any snug relationship between the bank and promoters?

Despite so many warrants issued against him, how did he escape from India? Corruption or political support or procrastination!

Epilogue:

A company shall either cut down costs or increase turnover, Kingfisher did none. Mallya wanted to be the jack of all trade; he mastered in none but became the King of disaster. He was too confident or too optimistic to take any decisions. It was a complete mismanagement which turned into a scam. He was too busy partying and never realized that his kingdom was drowning.

In the recent times corporate governance plays an important role to the success of business. After such scams strict rules & regulations, compulsory disclosures have been imposed on the company. On account of non- compliance severe penal actions are taken. But Indians are too brilliant to find loopholes, it is the duty of the Ministry, SEBI and Government to analyse and amend Laws on a timely basis and regulate the market.

“IF MANAGEMENT IS PERFECT,

COMPANY NEITHER FALLS RIGHT NOR LEFT,

OVERSIGHT RESPONSIBILTY UPWARDS

AS WELL AS DOWN,

CONGRATULATIONS! IT WILL ALWAYS HOLD THE CROWN!

Ashlesha Lele

Dissemination Board of Stock Exchange: An Analysis

In India, the Bombay Stock Exchange and National Stock Exchange are the two leading stock exchanges operating nationwide. However, many regional stock exchanges exist too. Such stock exchanges often face the risk of getting derecognized by the Central Government. This risk gave birth to the idea of establishing a Dissemination Board to provide an exit opportunity to the investors of companies that were listed on stock exchanges that have now been derecognized or have ceased their operations. This Article provides an analysis of the history of stock exchanges, their recognition and derecognition, the need for a dissemination board, its establishment, and its working.

1. History of Stock Exchanges In order to trace the footprints of Stock Exchanges in India, one has to go back to the 18th century. 22 stock brokers began to trade informally under a Banyan tree opposite the Town Hall in Bombay during the 1850s. In the year 1874, the brokers settled on Dalal Street for trading. Their association was formerly known as the Native Shares and Stockbrokers Association, which was formally named the Bombay Stock Exchange in the year 1875. Similarly, the National Stock Exchange was founded in 1992. As time passed, several stock exchanges were established that traded in the securities of regional companies. These include the Ahmedabad Stock Exchange (1894), Calcutta Stock Exchange (1908), Madras Stock Exchange (1920), Magadh Stock Exchange (now de-recognized), and many more. However, the Bombay Stock Exchange and the National Stock Exchange have been the two leading stock exchanges in India.

2. Recognition and derecognition of stock exchanges

Trading on stock exchanges scaled over time and a need for regulation of stock exchange activities arose. The Securities Contract Regulation Act, 1956 was, thus, enacted by the Government and came into effect on 20th February 1957.The main aim of this Act is to prevent undesirable transactions in securities by regulating the business of dealing therein. Section 3 of the Act provides for the recognition of stock exchanges. It states that to be recognized, one has to make an application in a prescribed manner to the Central Government. If the central government is satisfied, then it may grant recognition, subject to further inquiry and conditions as laid down in the Act. Every grant of recognition is to be published in the Official Gazette. The Act also provides that if in the interest of the public, the central

government is of the opinion that the recognition given to the stock exchange is to be withdrawn, then it can be done so under Section 5 of the Securities Contract Regulation Act, 1956. The recognition granted by the Central Government may also be surrendered by the Stock Exchange voluntarily.

3. Need for a Dissemination Board

Once a Stock Exchange has been derecognized, the trading in securities listed upon it is ceased. This leaves the investors with absolutely no exit opportunity as they can neither sell their shares nor can buy them. In order to counter these issues the SEBI in its circular no. MRD/DoP/SE/Cir- 36 /2008 dated 29th December 2008 issued guidelines in respect of exit option to Regional Stock Exchanges.These guidelines consist of answers to what happens with the securities listed on a derecognized stock exchange or the one whose operations have been ceased. It also through light on the rights of the shareholders of such stock exchanges. However, the exit policy was issued later on 30th May 2012 by way of circular no. CIR/MRD/DSA/14/2012.

4. Introduction and establishment of the Dissemination Board

In order to solve this issue, the SEBI came up with the Dissemination Board. Dictionary meaning of the word dissemination is 'to spread or give out something, especially news, information, ideas, etc., to a lot of people'. The function of a Dissemination Board is to spread information received from the exclusively listed company to the public.

The SEBI vide its circular no. CIR/MRD/DSA/14/2012 dated 30th May 2012 has provided an exit option to the derecognized as well as recognized stock exchanges seeking the voluntary surrender of recognition. Therefore, in the interest of the investors of exclusively listed companies, the stock exchanges having nationwide trading terminals shall establish a mechanism of a dissemination board. The circular stated above also provides for the procedure for getting listed on the dissemination board which has been stated hereafter.

5. Working of the Dissemination Board

In reference to the circular mentioned above (Circular no. CIR/MRD/DSA/14/2012 dated 30th May 2012), the companies listed on the existing stock exchange also known as exclusively listed companies (ELCs) shall seek a listing in any other Recognised Stock Exchange. However, on the failure to obtain a listing from any other stock exchanges, it shall cease to be a listed company and the securities of such companies shall be listed on the Dissemination Board. The exiting stock exchange shall enter into an agreement with the stock exchange providing a dissemination board. The exiting stock exchange is required to pay a one-time fee to the latter, such fee may be based on the number of companies on the dissemination board, their shareholders, their paid-up capital, etc. All the information received from the ELCs listed on the exiting or derecognized stock exchange shall be disseminated on the board and the willing buyers and sellers shall be able to disseminate their offers.

Willing buyers and sellers in this regard need to to get themselves registered with the stock brokers of the said stock exchange. Transactions carried out on the dissemination board will not require a contract note. The SEBI in its circular has stated that the Stock Exchange s all not enter into a listing agreement with the ELCs. The Exiting Stock Exchange and the Stock Exchange providing Dissemination Board shall widely publicize the dissemination board in a vernacular language newspaper and a national

newspaper having wide circulation.

6. Current Scenario

Currently, the Bombay Stock Exchange and National Stock Exchange provide for the Dissemination Board. As per an Article published by The Hindu's Business Line on 13th January 2018 (SK, L. (2017). Dissemination boards fail investors of regional exchanges. [online] The dissemination board of NSE sports a list of 641 companies that were listed on the Ahmedabad, Madras, Uttar Pradesh and other RSEs. The dissemination board on the BSE has 1,659 stocks belonging to Delhi, Vadodara, Gauhati, and other stock exchanges. Under the listing norms of SEBI, if a company listed on an exiting/ derecognized stock exchange wants to get directly listed on a national trading platform, it needs a minimum issued and paid-up capital of Rs.1 crore and a minimum net worth of Rs.3 crore. Companies in the dissemination board of exchanges are prohibited from disturbing their capital structure till the time they comply with the listing norms of national exchanges or decide to liquidate their business to exit the listed space altogether. Although a dissemination board provides an 18-month window for exclusively listed firms to get listed on a national stock exchange, it becomes difficult for many companies to remain in the listing space. Also due to the lack of a areness about the dissemination board, not all investors are able to exercise their exit option through it.

7. Exit from /dissemination board

If a company is willing to remove itself from the Dissemination Board it has to comply with the procedure laid down by SEBI in Circular no.SEBI/HO/MRD/DSA/CIR/P/2016/ 110 dated 10th October 2016. In an article published by Mint on 11th October 2016 (Laskar, A. (2016) SEBI allows 2,000 firms on bourses' dissemination boards to raise capital. The SEBI while putting out the norms for shareholder exit, directs stock exchanges to ensure that promoters of companies are making adequate efforts to provide an exit to their shareholders before removing the companies from the dissemination board. Every company on the dissemination board is required to submit a plan of action indicating their intention to comply with the listing norms of the SEBI or to provide an exit to its shareholders, which shall be provided within 3 months. The Stock Exchange shall review the said plan of action and ensure that the process is completed within a period of six months. The SEBI has given a clear warning that in case the promoter or directors of the company listed on the dissemination board fails to demonstrate sufficient efforts to provide an exit to its shareholders, then the company, its directors, its promoters, and the companies that are promoted by any of them will be debarred from the market for a period of 10 years. Further, it is also provided that the shares, bank accounts, or other assets of the promoters or directors of such non-compliant companies will be frozen so as to compensate the investors

The Dissemination Board while suffering from its flaws has proven to be beneficial to the investors as well as ELCs to a great extent.

Avanthika

Descriptive study on impact of Telgi swindle on Indian Economy

Summary of main points of telgi scandal:

Abdul Karim Telgli is the master brain of one of the most infamous scams in Indian economy called Telgi's scam which led to an estimate of Rs.32,000 crores (Rupees Thirty Two Thousand Crores Only) loss and spread across 72 towns 13 states in India. Abdul Karim Telgi is from a very humble family background and eventually committed one of the biggest scams.

Who was Abdul Karim Telgi?

Abdul Karim Telgi's parents are Ladaab Telgi and Shariefabee Ladsaab Telgi, he was born on 29th July, 1961. His father was a Central Government employee working for Indian Railways. Abdul Karim Telgi lost his father at a very young age and by which he started his survival by selling fruits at Karnataka's Khanapur Railway Station to meet his family's needs along with his mother and two other brothers and accumulated money for running the family.

Completed his schooling from Sarvodaya Vidayala Khanapur, which is an English medium school and after that he pursued his B.Com from Gogate College of Commerce in Belagavi, he then worked in Mumbai for few years has Sales Executive in Fillix India, he was an inefficient at his work due to which he was removed from the job and later on he headed towards South Mumbai, there he had been worked at Guest House and there also he could not perform well and thereby he had to leave the job then left for Saudi Arabia in the year 1980 in search of better job opportunities. He returned to Mumbai after 7 years and started a business of selling illegal stamps and stamp papers. When Abdul Karim Telgi returned to Mumbai he started a company called Arabian Metro Travel. He had been associated with fraudulent activities like making illegal passports by preparing fake documents (Emigration Check Required) deceiving the Government. He had sent lot of people overseas who were not eligible for further studies or job purposes due to lack of proper documents. Abdul Karim Telgi used to illegally prepare documents for them and by which he earned lot of money.

Personal life of Abdul Karim Telgi:

Abdul Karim Telgi got married to one Shahida Telgi, they have a daughter named

Sana Talikoti. Abdul Karim Telgi had a lavish life. He likes to live luxuriously. He frequently enjoys his time in Bars & Restaurants and once he had blown up Rs 90 lakhs (Rupees Ninety Lakhs Only) on a bar dancer Tarannumn Khan in Topaz Bar at Grant Road, Mumbai off late they both were in love with each other.

What was the scam about?

In the year 1993, Immigration Authorities of Government of India have noticed that Abdul Karim Telgi is in the Business of travel agency and was forging several documents, stamp papers to send manpower to Saudi Arabia and was arrested in Mumbai & imprisoned at Marg Police Station in South Mumbai. There was another Conman Ratan Soni, who was also arrested for fraud on the subject related to Stock Exchange and both of them became good friends in the jail. In the Jail Abdul Karim Telgi learnt & became expert in many methods of doing illegal activities. Abdul Karim Telgi was influenced by Ratan Soni of committing crimes. They both have done lot of quest or analysis and they observed the Stamp Related Regulations is an unorganized & unmonitored division in one of the Government Departments. After he released from the jail Abdul Karim Telgi started creating illegal revenue stamps, printing proxy currencies for disturbution. Abdul Karim Telgi and Ratan Soni had connections with the government officials and few politicians. They sold the stamp papers at a lesser price than the government fixed price. Abdul Karim Telgi made conversations with Samajwadi Janata Party MLA Sri Anil Gote was the key operator in this scam, Sri Krishna Yadav, the TDP MLA was arrested after police produced an evidence which has Voice recording in which Sri Krishna Yadav was demanding Rs 2 crore (Rupees Two Crores Only) from Telgi to help him in solving few cases in the then United Andhra Pradesh, Shri Madhukar Kulthey was a former employee of Indian Security Press who supported Abdul Karim Telgi in getting old printing machines at lesser rates and also supported Telgi in obtaining security papers from authorized vendors. Abdul Karim Telgi requested Sri Anil Gote to arrange a meeting with the then Revenue Minister (Sri Vilas Rao Deshmukh) of Maharastra. In this meeting Abdul Karim Telgi had obtained license to operate as a legal stamp vendor in the year 1994 in Mumbai. He then purchased scrap machinery and used them in fraudulent activities. He purchased some more inventories including ink from Nasik Press. He then started printing the exact replicas of the stamps, judicial court fee stamps, notaries stamp papers that were printed by the Government of India. In the year 1996, Abdul Karim Telgi by navigating his connections recruited about 300 people as his agents and had set up his own press on Mint Road in Mumbai and supplied stamps to different banks, insurance companies and stock brokerage firms. He had more than 170 offices and over 900 employees to sell the fake stamps and stamp papers, he had around 120 bank accounts in different banks.

Abdul Karim Telgi created a wide network and issued huge commissions from 20% to 30% to the vendors he appointed, on the other hand government would issue only 3% commission.

There were allegations that Abdul Karim Telgi and one of the big deals which his team sold was fake stamp papers worth Rs 70 lakh (Rupees Seventy Lakhs Only). This attracted the vendors through which they distributed the stamps papers smoothly. Many police officers and government employees were also involved. Even they found that one of the Police Officer illegally earned a net worth of 1 billion despite earning only Rs 9000 (Rupees Nine Thousand Only) per month during the investigation. At one stage Abdul Karim Telgi created a scarcity of original stamp

paper, he had blocked the supply of original stamp papers by diverting it to unknown address and his duplicate stamp papers were injected and the market was full of illegal stamps. Many people who unknowingly bought his stamp paper have left with invalid documents. Abdul Karim Telgi's business was worth crores of rupees and had been proclaimed as an offender.

The imprisonment and the demise of Abdul Karim Telgi:

In the year 2000, the two courier packets of Abdul Karim Telgi were caught Red Handedly during the transportation in Karnataka. In the year 2001 Abdul Karim Telgi was arrested in Ajmer. In the year 2003, there was another case on Abdul Karim Telgi and all the illegal stamp papers was recovered and a Special Investigation Committee had been set up, headed by the senior officers of the department and it was found that the scam had been carried out since 1994. The Special Department conducted NARCO Test Abdul Karim Telgi and he had revealed the names of the people who were also involved in the scam. The case was later on transferred to the CBI Department. In this enquiry CBI has found some more politicians who were also involved and On 26th May, 2004, CBI seized Rs.1.5crores of fake Non-Judicial stamp papers.

On January 17th, 2006, Abdul Karim Telgi and his associates were sentenced to 30 years of rigorous imprisonment in the fake stamp paper scam estimated to have been Rs 20,000 crores (Rupees Twenty Thousand Crores Only) and was fined of Rs 10 Billion (Rupees Ten Billion Only). Income Tax Department has confiscated his properties to repay the fine. As he was having a greater network, he had a lavished life in the prison as well. Off late he was suffering from diabetes and hypertension for almost 20 years and died on 23rd October, 2017, at the age of 56 years due to Tuberculosis Meningitis at Victoria Hospital, Bengaluru. Abdul Karim Telgi was declared HIV Positive in the year 2002. Year after his death, Nashik sessions court acquitted Abdul Karim Telgi and 6 others who were involved in fake stamp paper case in absence of sufficient evidence against them.

I conclude with my insights:

Following are few key points:

1- Abdul Karim Telgi was from a poor background and faced a lot of deprivation as a child.

2- He made use of human trust and used the system's corruption for his benefit.

3- Abdul Karim Telgi Scam not only impacted the Indian economy but also the common citizens who bought those illegal stamps.

4- Government Departments shall be regulated on constant basis so that if any illegal acts are being conducted can standstill and sanctions may be imposed for wrongful activities which are causing harm to the general public as well as the country's economy.

5- New Technology should be adopted so that the country's progressing will be hand in hand. With the help of Artificial Intelligence we can detect and also prevent the crimes in various ways.

6- Abdul Karim Telgi made money for his own benefit but has affected the entire nation.

Deepthi Lakhotiya

Paternity Leave – A Way Towards Healthy Parenthood

Meaning and Scope of Paternity Leave:

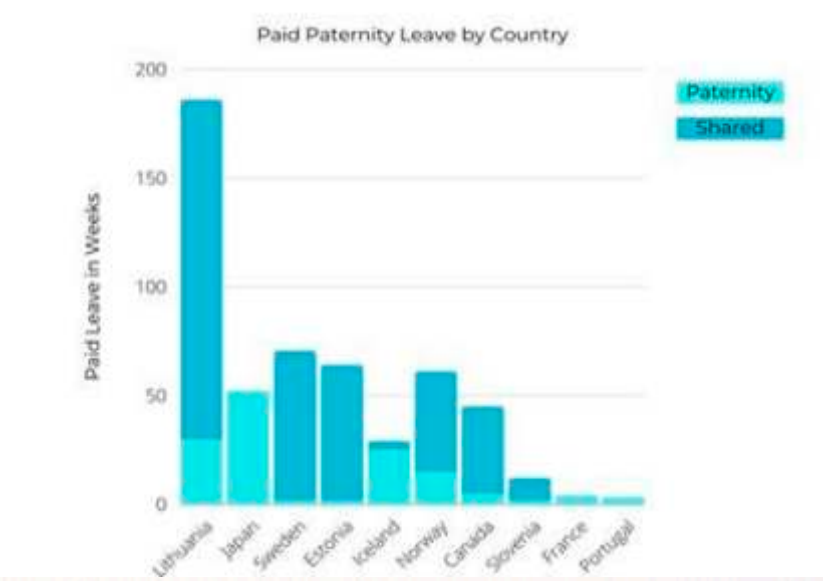
Paternity leave refers to time taken off by the father of a new baby from work in order to spend time and take care of their new-born or for their adopted child or foster child.

A new-born needs the care and love and love of the father as well as the mother. Childcare is the joint responsibility of both the parents. It's not only about the food and nursing that mother offers, but the care and affection that father shows is equally important for a new-born, to grow with secured warmth.

It empowers fathers to spend time and bond with their child throughout the formative months. This normal nurturing between the two genders has a profound effect on a child's development.

It's still quite rare. Fathers are adulated for doing what they should normally do. It is time to normalise father's taking care of baby. Paternity leave gives father an opportunity to be a primary caregiver and to recognize and appreciate the unique challenges of the role of both parents. It also takes the pressure off from new mother, who often feel like they're facing this challenge alone.

Dedicated fathers taking leave support women to boost their own careers. Seeing fathers are caregivers reduces gender discrimination in the labour force, including the pay gap (paternity leave



decreases wage loss for women).

Paternity Leave Global analysis when compared with India:

Paternity leave was born back in the 1970's, but it was limited to a few countries. It took shape during the first two decades of the new millennium. Worldwide, among 195 countries already 90 such countries are offering paid parental leave.

The European country of Lithuania gives fathers 30 days of paternal leave paid 77.58% of the normal wage.

Sweden gives both parents access to 480 days of collective leave with partial income.

Japan offers one full year of paid parental leave only for fathers.

Iceland offers maternity and paternity leave for 12 months, equally divided between mother and father (six months each).

Estonia provides fathers with two weeks 100% paid parental leave, plus an additional 435 days of joint parental leave.

Legislative Formulation in India:

Paternity leave is a rather new concept in the Indian corporate setup and most companies have started offering it in the last few years. There is no set time duration for paternity leave in corporate India.

As per Central Civil Services (Leave) Rule 551 (A) Central Government employee gets 15 days of leave as paternity leave for the employees who have less than two surviving children.

Further, the said leave can be availed for a period of 15 days either before or within a period of 6 months starting from the date of delivery of the child.

However, there is no legal provision for paternity leave in private sector. Most of the Multinational companies in India have brought in similar policies that are already followed by their own global offices situated outside India.

Few Examples have been outlined with regard to the MNC's which have initiated with such policies.

Such as:

Name of the Companies	No of Paternity leaves allowed (Days/Weeks/ Months)
Zomato	26 weeks
Microsoft	12 weeks
Infosys	5 days
TCS	15 days
Oracle	5 days
Starbucks	12 weeks
Facebook	17 weeks
Deloitte	16 weeks
IKEA	6 months
Tata Steel	10 days

In 1961, the Government of India made provisions for working pregnant women known as the Maternity Benefits Act. Women under this Act are entitled to various benefits, facilities, and incentives. But no provision has been laid down in legislation for paternity benefits. As the necessity of laying down of provision for paternity leave to maintain a healthy family was seen. Thus in 1999, the Central Government of India made provision of paternity leave for Central Government employee under Central Civil Services (Leave) Rule 551 (A) as mentioned above which provides 15 days of leave as paternity leave employees who have less than two surviving children.

In September 2017, pursuant to the enactment of Maternity Benefit (Amendment) Act, 2017, the Paternity Benefit Bill, 2018("PB Bill") was proposed in the Lok Sabha by Maharashtra MP, Rajeev Satav.

Paternity Benefits Bill, 2017:

"Childcare is the joint responsibility of both the parents. They must devote time to the

new-born to ensure its proper well-being." – Rajiv Satav, Member of Parliament, Maharashtra.

According to Paternity Benefit Bill in 2017, all the workers working in both unorganized as well as the private sector, have the right to avail paternity leave of fifteen days. Further the said period can be extended for three months. Moreover, every male employee, who has worked for a minimum of 80 days in an establishment, becomes entitled to receive paternity benefits. Paternity benefits are calculated at the average daily wage paid to the employee for the number of days worked by him.

This bill cited the equal parental benefit to be provided to both mothers as well as father.

According to the 7th Central Pay Commission provision of leave to be granted to a government employee, during the adoption of a child below the age of 1 year.

Penal Consequences:

An employer who refuses to pay any amount of paternity benefit to a man eligible under this Act shall be sentenced to imprisonment for a term not less than three months but not more than one year and a fine of not less than Rs.20,000 but not more than Rs.50,000.

But still no legal provision is made on paternity leave. The paternity leave right in India undermines the fundamental principles of Articles 14, 15 and 16 and 42 of the Constitution of India.

Paternity Leave in the Judiciary:

There have been many occasions where query or demand for paternity leave reached the Courts but none of them got success in getting a nationwide formulation of such policy.

Reference of the case laws discussed in the above have been extracted below for your perusal:

I1n the case of iChander Mohan Jain V/s N.K Bagrodia Public School , Chander Mohan Jain, a private school teacher, challenged N K Bagrodia Public School's denial of his paternity leave application and deduction of his salary for taking leave to provide for his wife and newly born child in the High Court of Delhi in 2009. Despite the lack of regulation, the New Delhi High Court ruled that all male staff of unaided recognized private schools is entitled to paternity leave in this case. The court then ordered the school to refund Chander Mohan Jain the money that had been deducted. As a result, private-sector teachers are being relieved as they are under the control of Director of Education and thus CCS (paid) leave would be applicable.

In the case of 2Rakesh Malik V/s State Of Haryana, the petitioner who was state government employee prayed for paternity leave but was denied which he later challenged in the High Court and urged the Court under the ambit of Article 226 to frame such policy but the Court denied. Also, in the case of 3Vijendra Kumar V/s Delhi Transport Corporation, Government Of NCD, The Court was once again called to intervene where a driver in the Delhi Transport Corporation filed an OA but the Court rejected the appeal stating that there were no provisions in the DTC regarding paternity leave and CCS Paternity leave rules were not adopted by them.

Conclusion:

It is the time now where both father and mother should share equal responsibility as caregivers, and breadwinners.

It promotes gender equity in both the

working and private spheres.

Paternity leave will be a stepping stone in breaking down longstanding cultural norms about gender, work and household chores and responsibilities.

With this fair participation in domestic work by men and women it will encourage them to seek good career opportunities and achieve more freedom to live in a more equal and unbiased societal nature.

From the legal stand point of view judiciary should provide the necessary support by making the appropriate laws in favour of such paternity leave in healthy upbringing of the children.

Lawmakers should also implement strict actions against these aspects in form of charging penal consequences.

Further, rules for Paternity leave in India and the enactment of the PB Bill will be towards a great initiative in view of welfare legislation. It helps to promote India to be in align with global employment regulations and best practices.

Also, various Campaigns, welfare programs shall be conducted to spread more awareness about paternity leave and its importance in the upbringing of children.

Dishant Soni

INOX and PVR Merger

INTRODUCTION

1] PVR LIMITED

PVR Limited (PVR) is a public listed company incorporated under the provisions of the Companies Act, 1956. As on 31 March 2022, the promoter group holds 17.01% and the public holds 82.99% in PVR

PVR is engaged in the business of exhibition, distribution and production of movies, and also earns revenue from in-house advertisement, sale of food & beverages.

PVR is the largest player in the film exhibition industry in India (hereinafter referred to as the 'Film Exhibition Industry') as out of the total of approximately 3200 multiplex screens in India4, PVR is currently operating 871 multiplexes (including high end single screens) in 181 properties spread across 73 cities.

2] INOX LEISURE LIMITED

Inox Leisure Limited (Inox) is a public listed company incorporated under the provisions of the Companies Act, 1956. As on 31 March 2022, the promoter group holds 44.04 % and the public holds 55.84% in Inox. Inox is engaged in the business of operating & managing multiplexes and cinema theatres in India.

Inox is the 2 nd largest player in the Film Exhibition Industry in India after PVR, operating 675 multiplexes (including high end single screens) (out of the total of approximately 3200 multiplex screens in India) in 160 properties spread across 72 cities.

In the past, Inox has acquired control over: (i) Satyam Cineplexes in 2014, (38 screens); and (ii) Fame Cinemas in 2012 (95 screens). 10 Inox also proposes to open additional 958 screens post FY 2021-22

On 27th march 2022 , the board of directors of inox and PVR approved the proposed plan of merger , subjected to shareholders' approval which was subsequently acquired .Public announcement about the merger was also done on the same day.

REASONS FOR THE MERGER

Finances

During the pandamic of covid-19 both PVR and INOX hit heavy losses having respective net loss of 377 crores and 747crores in Fy2021.

OTT platforms

During the pandamic when cinema halls were closed, over the top(OTT) platforms with big pocket such as netflix and amazon

prime made way in India to acquire new subcribers.

"The film exhibition sector has been one of the worst impacted sectors on account of the pandemic and creating scale to achieve efficiencies is critical for the long term survival of the business and fight the onslaught of digital OTT platforms," Ajay Bijli, Chairman and Managing Director of PVR said.

The aim of the merger is to compete together against the OTT, which got an advantage when the cenima halls were closed. In addition their aim is to provide the best cinema experience in teir-2 and 3 cities.

ANTI COMPETITIVE AGREEMENT?

After the public announcement of the merger , the primary question was why didn't the Competition Commission of India(CCI) interfere? For that answer let us see the regulation of combination under competition act ,2002.

Combination

Section 5 of this act defines combination. Combination refers to mergers and amalgamation amongst enterprise, or acquisition of control ,shares,voting rights or assets of an enterprise by another person ,provided the financial threshold specified in the act are satisfied .

The De-Minimis Exemption notification provides that, where portion of an enterprise or division or business being acquired or taken control of, is 350crores or 1000crores for assets value or turnover respectively, are exempted for giving a notice regarding the combination

In case of INOX-PVR merger, PVR were required to give notice about the combination ,but were exempted by the provision of notice as the turnover of inox was less than 1000crores. Therefore CCI couldn't scrutinise or form an opinion in regards to the merger.

Although the current merger was not under the preview of combination, there are still provision of anti competitive agreement in competition act under which CCI could have initiated inquiry in regards to a possible agreement having appreciable adverse effect.

As CCI , failed to take action ,a non profit organisation names Consumer Unity and Trust Society (CUTS) filed a suit in CCI regarding the merger which was rejected . There CUTS filed an appeal against the rejection of suit and also moved an application against inox and pvr in national company law appellate tribunal(NCLAT).

DETAILS OF APPEAL BY CUTS

The NPO provided with various alleged contravention might take place in the given merger

Some of which are given below:-

1) PVR and Inox have entered into the Proposed Agreements in respect of supply and/ or acquisition/ control of the provision of film exhibition services, which are likely to cause an AAEC within India, in contravention of Section 3(1) of the Competition Act, as discussed in detail below.

2) Limited availability of space at several key locations. The location of a multiplex is essential for its commercial success as a multiplex located at a prime location will attract more customers

3) Another dimension along with cinema operators compete is the quality of the physical theatre infrastructure, food and beverage offerings, and service. Again, given the removal of competitive constraints, quality and service levels

would inevitably fall.

4) Competition between cinema operators also pushes them to constantly adopt new technologies and improve customer experience. These include better projection and sound systems, and upgrading screens to 30, 4DX, etc. With the removal of competitive constraints, there would be no incentive to adopt technologies quickly to provide a better product than rivals.

5) By substantially increasing concentration levels, and by creating a clear market leader which would be dominant in several markets, the Proposed Agreements would create the ideal conditions for collusion through leadership. As the largest player by far, the Combined Entity would be able to act independently of other multiplex operators and set industry benchmarks related to price, technology, and service standards. It would then be very easy for smaller players to follow these benchmarks.

CUTS in their application to NCLAT have also mentioned various precedent and case laws regards the legal issue involved.

In the case of Mr. Ramakant Kini v. Dr. L.H. Hiranandani Hospital, Powai, Mumbai, Commission observed that Section 3(3) and section 3(4) are expansion of section 3(1) but are not exhaustive of the scope of section 3(1). There can be various kinds of agreements among enterprises which may fall under section 3(1) including agreements which are against the interests of consumers, affect freedom of trade and cause or are likely to cause appreciable adverse effect on competition in India. Section 3(3) carves out only an area of section 3(1). The scope of section 3(1) is thus vast and has to be considered keeping in view the aims and objects of the Act i.e., freedom of trade, consumer welfare etc. by ensuring that the markets are not distorted and made anti-competitive by such agreements of the enterprises which appreciably adversely affect the market or are likely to adversely affect the market.

Commission in P.K Krishnan v. Paul Madavana and Rohit Medical Store v. Macleods Pharmaceutical Ltd. , while referring to the Hiranandani Case, held that position is quite clear that an agreement, even if it is not falling under Sections 3(3) or 3(4) of the Competition Act, is amenable to the jurisdiction of the Hon'ble Commission under Section 3(1) if the same has an AAEC.

RELIEFS SOUGHT BY CUTS

1) Initiate an inquiry/ investigation against Inox and PVR for anti-competitive practices under Sections 3 of the Competition Act.

2) Order PVR and Inox to amend the Proposed Agreements under Section 27 of the Competition Act by directing suitable modifications to ensure that the same does not cause an AAEC in India.

3) Exercise its powers under Section 28 of the Competition Act to ensure that the Combined Entity does not abuse its dominant position by virtue of it being in a dominant position.

4) Pass any other order that the Hon'ble Commission may deem fit.

The matter came up for hearing before a two-member bench which has been adjourned till feb 9 2023

CONCLUSION

With being one of the most controversial merger of near past, it is also the need of the time .If we briefly overview the possible outcomes of the final order of the merger ,we might better understand the need of the merger.

1) Merger is reversed

If the merger doesn't take place , there will not be any competition as both the companies wont survive coming year with the pattern of lose in past 2 years. Competing with a rival and in the same time fighting for survival will become impossible for both the parties involved .the company will have to increase the prices of every commodity to ensure some revenue source which will negivtively affect the consumers

2) If merger takes place

If the merger does go forward , the companies will poll their resources and work towards technical development and cost cutting. The true competition is against the OTT platform and this merger will lead to a healthy balance between the 2. INOX and PVR might seem to have the majority shares in the cenima industry , but their combined market share in the sector is still near 40% which ensures that there will not be any monopoly . in regards to unfair trade practices , CCI acts as a watchdog towards all such activity and will ensure nothing of the sort takes place.

Harsh Raval

Does NFTs come with IP RIGHTS?

The Fungible token means something which is exchanged with another yet holds same value for example, exchanging one 2000 rupees note with four 500 rupees notes here the notes are exchanged yet value remain same as earlier

On the other hand NFTs or Non fungible tokens are assets which cannot be substituted. It has unique attributes that make it different from other asset although it seem similar . For example , if a boy has photograph of actor he merely own photograph but original right is still vested with photographer of actor

How NFTs are related to IP RIGHTs is , Intellectual property is creation of mind by literacy and artistic work of designs , symbols, and even names . Thee are obtain from mental labor which are further protected under legal framework, known as Intellectual property. The patent owner hold sole right to make , utilize , present the work . Trademark make it illegal to use name whichever are identical to that of already existing. Such kind of protection are very important for any businessman working toward Innovation so that they can work without fear of theft of their work

NFT owner can include brand having logistics and trademarks in the consumer market , book author , movie actors ,song writers , gane companies or even physical art producing artists . These owner are like to share these arts with other , which other can mint of NFT . These arise an fear of infringement of IP rights . Nevertheless, NFTs don't automatically come with IP RIGHTS. Ownership of NFTs are only displayed on shelf , there is difference between NFT Ownership and IP rights

NFT Ownership and copyright of underlying asset , When someone purchases NFT the purchaser only get ownership of particular copy of NFT in form of cryptoghaphically signed receipt. Here, two confusion must be clarify first, purchaser has no proprietary rights to every copy of purchased work and second the purchase not get original copyright of purchased work which is rested on creator it only has ownership of purchased work

Ownership of underlying right will only transfer when the creator of original work agrees to transfer those right to NFT owner

Trademark and NFTs, When a business person tries minting an nft for an underlying asset his first and foremost strategy would be to be unique in marketplace . However when any unauthorised party tries to sell, mint or resell the nft using owners registered trademark without prior authorisation will result in trademark infringement

The law and lacunae on NFTs and Iprights

While NFT transaction has made a significant change in art market by providing accessibility and security to NFT transactions but there are still many questions arising about the sellers genuineness as many a times someone sale an artwork by acting as or original owner but they are not original owner in such a case the copyright owner has civil and criminal remedy available under section 55 or section 63 of copyright law to evaluate whether infringement has occurred and whether it fall as per section 52 of Copyright Act the principle of copyright infringement outlined in section 51 of the Copyright Act will be applied

According to section 79 of Information Technology Act 2000 and intermediaries guidelines/rules the obligation will also lies on NFT marketplace and platform to exercise due diligence and act quickly where they come to know that their platform is used for an illegal act

Even though an NFTs had gained much popularity in world and is traded over the globe there are no law in India governing NFT trading as they are only valuable in cryptocurrency. As a bill in 2019 called banning of cryptocurrency and regulations of official digital currency bill was introduced advocacy for complete ban on cryptocurrency and trading of which directly or indirectly will attract criminal penalties

Aside from the above bill RBI in 2018 also attempted to complete ban on crypto currency in result of which the Internet and mobile association of India with other organisation and enterprises that manage online crypto asset exchange platform file a appeal

The apex court set aside the order of RBI the three judge bench stated that RBI could not impose limitations cryptocurrency as there was no legislation prohibiting the purchase or sale of this currency

The court found that such restriction would violate the fundamental right of person to engage in any lawfully permitted trade

Conclusion

The ownership of NFTs is based on demand and supply similar to other asset in real world because NFTs rarity add value to it. An NFTs can be anything such as financial investment, a link between artist and person who is interested in collecting art or carrying some emotional worth in art world

However IP right issue is still Therefore while considering intellectual property implication on NFTs it is essential to draw a line of difference between intellectual property and NFTs. Therefore legal structure of cryptocurrencies requir to easy trading of NFTs in India the requirement is only the strong and clear statutory framework

The NFTs are on boom in recent months but the future of them is on question many has opinion that NFT is bubble ready to burst. The wide discussion about holding NFT and then selling it access rate is done on social media as well as news media few are of opinion that holding NFTs is worthless because business has just now started to invest in utilise blockchain therefore securing one's IP right is essential to prevent being knock off in the market

Hrucha Bachal

Arcelormittal India Private Limited V. Satish Kumar Gupta

INTRODUCTION

Since a company is a distinct yet artificial entity, undue advantages are taken to commit fraud and hide under the separate legal entity title. Section 29A of IBC 2016 states ineligibility to submit resolution plans. Still many entites have taken adavnatge of this and filed resolutions plans for the company they were linked to.

Corporate Insolvency Resolution Process was initiated against Essar Steel India Limited (ESIL) before NCLT under Section 7 of The Insolvency and Bankruptcy Code 2016. Resolution Professional of ESIL found both resolutions of ArcelorMittal India Private Limited and Numetal Limited ineligible under Section 29A.

FACTS

- Essar Steel India Limited (hereinafter referred to as ESIL) initiated The Corporate Insolvency Resolution Process at the behest of financial creditors, State Bank of India and the Standard Chartered Bank for the sum of roughly Rupees Forty-Five Thousand Crores.

- Satish Gupta was appointed as the Resolution Professional.

- An advertisement was published for seeking Expressions of Interest from potential applicants, to which 'ArcelorMittal India Private Limited' (hereinafter referred to as AMIPL) and 'Numetal Limited' (hereinafter referred to as Numetal) submitted an Expression of Interest (EOI).

- AMIPL and Numetal submitted their respective resolution plans. Which was held ineligible by RP under Section29A1

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1. As mentioned in the resolution plan , ArcelorMittal Netherlands BV (AM Netherlands) is a connected person to AMIPL. AM Netherlands has been disclosed as 'promoter' of Uttam Galva Steels Limited (UG) with 29.05% of the shareholding.

2. UG's account was classified as NPA(for more than 1year) on 31st March 2016 by Canara Bank and Punjab National Bank

3. On Plan Submission Date, AM Netherlands had not obtained the Stock Exchange Approvals relating to declassification as a promoter of UG and thus continued as a promoter of Uttam Galva, which made them ineligible under Section 29A.

Numetal was found ineligible on the same date, found-

1) Numetal relied on its shareholders Essar Communications Limited (ECL) on the date of submission of EOI and on Crinium Bay on Plan Submission Date to comply with eligibility requirements.

2) Numetal was a newly incorporated JV between Aurora Enterprises, Crinium Bay, Indo International Limited, and Tyazhpromexport, formed just 7 days prior to submission of EOI, for ensuring the compliance within Section 29A, RP considered such shareholders of Numetal as JV partners acting jointly for purposes of submission of resolution plan.

3) As per SEBI (SAST) Regulations 2011 a person is said to be acting in concert amongst others which includes the father of such persons. Aurora Enterprises(AEL) is completely held by Rewant Ruia. Rewant Ruia is deemed to be acting in concert with his father Ravi Ruia whose account was classified as an NPA for more than one year prior to the commencement of the resolution process.

4) Hence Rewant Ruia is not eligible under Section 29A of the IBC 2016 and Numetal which was just a JV through which shareholders were submitting the plans was also not eligible under Section 29A of the Code.2

AMIPL filed an appeal before the Adjudicating Authority against the order passed by the RP, NCLT held-

1) The Connected persons of AMIPL are the promoters of KSS Petron, which had NPA for more than one year and CIRP has been initiated against KSS Petron.

2) AM Netherlands was an indirect 100% subsidiary of ArcelorMittal Societe Anonyme (AMSA) and AMIPL is also an indirect subsidiary of AMSA. Thus AMSA, is a promoter, in the management and control of AMIPL and AM Netherlands is a subsidiary of AMSA and AMIPL becomes connected persons having NPA through UG.

3) Laxmi Mittal was also the promoter of KSS Global BV. KSS Petron was 100% subsidiary of KSS Global BV. KSS Petron had NPA for more than one year which ultimately made AM ineligible.

The matter was later placed before COC

NUMETAL

- AEL had a significant influence on Numetal which makes it an associate company and an associate company is considered as the related party making Numetal acting in concert with AEL which is acting in concert with Rewant Ruia and hence Ravi Ruia.

- CoC held that Numetal shall be eligible only if it clears dues of connected persons having NPAs.

AMIPL

- AMIPL was an ineligible resolution applicant under 29A©, who was acting in concert with AM Netherlands

- Before the resolution plan, AM Netherlands had arranged for the sale of its holding in UG was the ultimate proof that AMIPL was acting in concert with AM Netherlands.

- CoC in case of AMIPL also held that if it paid all dues it shall be eligible to re-submit plan.

- Once the stigma of 'classification of account as NPA' has been labeled on the promoter, the only way to become eligible is to by making the overdue good and no other way is prescribed under IBC.

Shareholding of Numetal when 1st Resolution Plan was submitted

Rewant Ruia was 100% shareholder of AEL and AEL had shareholding of 25% in Numetal Ltd. Therefore AEL becomes related party of Numteal and thus becomes 'person acting in concert'

Thus AEL being of the shareholders of Numetal Ltd , Numteal Ltd becomes ineligible under Section 29A.

After granting an extension for submitting fresh Resolution Plans, Numetal filed fresh plan on 29th March 2018 and on said date the shareholding was as follows-

i. CRINIUM BAY (VTB) : 40%

ii. INDO : 34.1%

iii. TPE : 25.9%

Since AEL was not a shareholder of Numetal Ltd and remaining shareholders were eligible, Numteal was held eligible in respect of the Resolution Plan submitted on 29th March 2018.

Section 29A of the Code has been amended twice to clearly state ineligibility and avoid any undue advantages. Finally, The Insolvency and Bankruptcy Code (Second Amendment) Act 2018 received assent on 17.08.18 but came into force with retrospective effect from 6.6.18

Section 29A states that

A person shall not be eligible to submit Resolution Plan, if such person, or any other person acting jointly or in concert with such person-

- is an undischarged insolvent;
- is a wilful defaulter in accordance with RBI guidelines
- at the time of submission of resolution plan has an account or an account of corporate debtor under the management or control of such persons or of whom such person is promoter, classified as non-performing asset (NPA) AND atleast a period of one year has lapsed from the date of such classification till date of commencement of CIRP of Corporate Debtor.

Provided that person shall be eligible to submit resolution plan if such person makes payment of all overdue amounts with interest and charges relating to NPA accounts before submitting of resolution plan.

The above clause shall not apply to following persons

- Applicant who is financial entity and is not a related partyof the corporate debtor
- Applicants who have received NPAs pursuant to prior resolution plan.
- has been convicted for any offence punishable with imprisonment for two years or more; disqualified to act as an director under the Companies Act 2013;
- for seven years or more under any other law for time being in force;
- prohibited by SEBI from trading in securities or accessing market
- convicted for an offense punishable with imprisonment for 2 years under any act specified under Twelfth Schedule
- subjects to disability, corresponding to above mentioned clauses under jurisdiction outside India
- has been promoter or in management or control of corporate debtor that maybe within scope of provisions relating to avoidance of transactions

- connected persons not eligible as above

For the purpose of this clause , the expression of "connected persons" means-

i) any person who is the promoter or in the management or control of the resolution applicant; or

(ii) any person who shall be the promoter or in management or control of the business of the corporate debtor during the implementation of the resolution plan; or

(iii) the holding company, subsidiary company, associate company or related party of a person referred to in clauses (i) and (ii):4

The Supreme Court in its judgement passed an order - If a person wishes to submit a resolution plan jointly or in concert with others, they must first pay off their NPA in order to become eligible under Section 29A (c) of the IBC.

- The Court observed that the period of time spent in litigation before the NCLT or the NCLAT with respect to any issues arising from the CIRP shall be excluded from the 270 days.

- The Court further held that the person mentioned in the definition of "Relative" will have a connection to the business of resolution applicant and hence the term "Related Party" & "Relative" shall be read noscitur a sociis. The Court held both AMIPL and Numetal were ineligible to submit resolution plans under Section 29A. However, upon the request of the CoC of ESIL, the Court exercised its extraordinary power under Article 142 of the Constitution and granted one more opportunity to AMIPL and Numetal to pay off their NPAs within 2 weeks from the date of receipt of the Judgment. If such payments are made within the aforesaid period, both resolution applicants can re-submit their resolution plans to the CoC who shall decide within 8weeks from the date of the judgment. In the event the CoC fails to make such a decision with the prescribed majority, ESIL shall go into liquidation.

CONCLUSION

The Government brought the Insolvency and Bankruptcy (Second Amendment) 2018, to remove irregularities of Section 29A of the Code. The term "Related Party" was inserted in the Code via sub-section 24A which gave an exhaustive list of people/entities coming under the ambit of a related party. The Court held that persons who act jointly or in concert with others are connected persons. Even though both the parties took undue advantage of loopholes in the Code, the Court had to apply creative interpretation to Section 29A. The Court gave Literal Interpretation of sub-provisions of Sec29A while keeping the object of the Code upfront which helped in implementation of Section 29A in a positive way. 5

This gives us the answer of our question in the title, you can try to take undue advantages of the loopholes of the laws, Supreme Court is sitting one step ahead of you to ensure that such undue advantages are avoided and proper interpretation of laws is done.

Ishita Srivastava

Does corporate world excite you? well Company Secretary is one option you can choose

"Role as a Company Secretary remain most valuable in this Endeavour, we as a Company Secretary not only help in wealth creation but also make sure that the rule of law has been applied in letter and spirit"

In the corporate world the key position in the company that is mostly heard are Managing Director (MD) , Chief Executive Director (CEO) , Chief financial officer (CFO) but there are other key managerial position personnel which includes COMPANY SECRETARY

But the question arise here is that whether company Secretary as a career is worth it ? do we have exposure ? do we grow as the Company Secretary or not ? Do we have scope outside India? And the most common question among people is what we do as Company Secretary ? what are functions of company secretary in a company ? and how we are key managerial personnel 2to the company

Well , all your doubts will be clear in this article and by the end you will be sure that pursuing a career as a Company secretary is the best in terms of growth , exposure and devlepment

AS shri P Shiv Shankar former Minister of Law , Justice and Company Affairs said "The profession of Company secretaries has an important part to play in the introduction of professionalism in the area of corporate management"

As the motto of Institute of Company Secretary of India says Satyam Vada Dharman Chara which reflects the work of ensuring truthfulness and transparency by the Company secretary

1 What is written in law and what it meant to be written in law

2 Most important person of company

Company secretary is not the sterotype of a person who must advise its board but more than that its like a trusted " TRUSTED ADVISOR" and an expert who knows and understand laws. He/she is like a bridge for information, communication channel, advice, and arbitration between the board and public, shareholder, and regulatory

authority and other who have legitimate interest in the company.

The most common disbelief related to Company Secretary is that the work of company secretary is limited to only company law bit it has been seen that the role of CS has ventured into different areas beyond just company law and emerged in different field as the expert of tax, financial market, merger and amalgamation etc and Hence, we as a professional should explore beyond the boundaries and our comfort zone and try to be the expert in various areas

Company secretary is like a "power booster" for the company to encourage the plans and smooth achievement of objective of the company and plays an important role as governance professional in different types of corporate whether it is public company, private company, government company by not only complying with laws, regulations, standards and codes but also creating culture of good practice

The idea of Gandhi ji in trustship has a similar objective as the CS is the custodian of the interest of shareholder, investor and people at large.

To understand the duties and function of company secretaries properly it is necessary to know in which capacities they work. Mainly Company secretaries have opportunities in the two domains:

1) Company secretary in employment;

A decades ago, there was this perception about CS is that of a person who helped only in facilitating conduct of meetings of the board, committees and shareholders meeting, sending notices and agenda for these meetings and than finally preparing and circulating minutes of meetings to the board member. He/she was also expected to coordinate all the activities that went into the rigmarole associated with holding of meeting. Thus the role was sadly limited to that of being a record keeper and compliance officer.

But now a days company secretary has grown expecedetly they are recognized and sometimes known as head of governance we hold a strategic position at the heart of governance operations within an organization.

Although there are many roles and responsibility that a CS has to perform being in employment but some of the Roles and Responsibilities which a CS in employment need to know is:

a) To ensures that company is in compliance with the applicable laws and secretarial standards

b) To assists the boards in the conduct of the affairs of the company

c) Proper maintenance of books and registers of the company

d) To assist and advise the board of director in ensuring the good corporate governence and comply with the requirement of the same.

e) To provide to the directors of the company, guidance with respect of duties, responsibilities and powers

f) To facilitate the convening of meetings, attend board, general, committee meetings and maintain the minutes of the respective meetings

2) Company secretary in practice;

One of the most essential advantage of taking this course is a person can not only be in employment but entitled to practice after obtaining certificate of practice from the institute. The role as a praticising CS comes with more authority level as

compared to CS in employment. And a need of CS in practice has increased over a period of time because Firstly, the income is stable and is not subject to increase in the revenue of the organization. Secondly, the function of CS in practice is bounded by the agreement and Thirdly, and the most important advantage is that the area of specialization which is not a choice in the employment. A PCS have different roles to perform in a nut shell the roles a PCS perform as an Advisor, Auditor, Consultant, Researcher and Representative.

As a PCS we not only provide services in corporate but also contribute to the other exciting areas like in Financial market, International trade and world trade, Information Technology, Real Estate. Recently the PCS have got Trade Mark recognisation as per Trade Mark Rule,

2017 a member of Institute of company secretaries of India has been qualified to be registered as a Trade mark Agent.

There are certain emerging areas also which will give a great exposure to companies secretary in future and they are Human resources, Carbon Credits, Investigation, Maintaince, Agreements and Audits, Intangible Assets Valuations, Insolvency, and GST. One of the most roles that CS in Practice perform is Certification of the e- forms that a company filed to the registrar of companies they certify these forms and other necessary documents from a CS in Practice as trustworthy person.

For your surprise a Company Secretary also have role to perform in the Film Industry as a vetting and drafting agreements, Laisoning Agents3, Matters relating to Taxations and many more in short we have no limits and a great diversification to show our knowledge and skills.

Now let's talk about one of the most important service that a CS in Practice provide which is Secretarial Audit as we know company has to comply with laws, acts, rules, regulations. Basically secretarial audit is conducted to audit non financial aspects of the company. It involves an independent verification of the records, books, paper and documents by the Company Secretary to check the compliances status of the company which helps it to accomplish its objectives.

Secretarial audit is basically based on the one principle of "Prevention is better than cure" which is not to find faults and be sure that company is in compliance with various regulatations to avoid compliance risk which improves company's effectiveness, control, and governenance.

The main purpose of secretarial audit are:

1) To ensure that the legal and procedural requirement are complied

2) It provide a level of confidence to the director

3) Strengthen the image and goodwill of a company in the minds of regulators and stakeholders

4) It also helps the investor to analyze the compliance level of companies.

Companies secretary scope outside India:

Many people have this doubt who is thinking of pursuing the CS as a course that do they even have a scope of work aboard or not as the career in terms of growth and stability is

3 A contract person who officially designated to act on behalf of the applicant.

more flourishing in India as compared to the abroad because the course is majorly based on Companies Act, 2013 and which has no relevance outside India however this is the one of the most common

misconception that people have as Companies secretaries not only have major role to play in India but also in abroad. Many CS is already employed in other countries such as United States, Canada, Singapore, Australia. The globalization of services through the WTO have provided opportunities for company secretaries and there is a agreement which India has signed to recognize the CS as professionals who can freely move across borders and hence, CS will have access to other parts of the world.

There are also other opportunities available for a CS abroad like drafting a contract as this has lot of scopes abroad a person. A CS can also work as a Freelancer but one have to find the an good opportunity that will relate to compliance and various company related documents and even being a part of drafting of minutes of Annual General Meeting or other meetings even some clients also agree for a one time work of vetting documents and ask for some suggestions for compliance applicable to the respective company. Hence, considering the number of opportunities open for us , it is definitely has a lot of scope in India as well as abroad.

As we discussed above CS work in different capacity, let's have a detail discussion on few important capacities that have emerged recently and can be a better growth and career opportunities for a person pursuing CS as a course

Companies secretary as an Representative:

As we know CS can appear before many authorities as an authorized representative of the company at National Company law Tribunal and National Company Appellate law Tribunal but he/she can appear before other authorities as well they are :

1) Competition Commission of India

2) Consumer forums
3) Tax authorities

4) Securities Appellate Tribunal

5) Other quasi judicial bodies and Tribunal

Companies secretaries as Insolvency Professional: Recently due to increasing cases of insolvency and bankruptcy it has been seen that insolvency professional has vital role to play. However, there is a different procedure and examination conducted by the institute for a person who wanted to be a insolvency professional but as CS you can also work as insolvency professional CS who have passes necessary examination and having a prescribed number of years of experience but have to enrolled with and Insolvency Professional Agency and registered with Insolvency Board of India and easily take up matters relating to corporate insolvency resolution process.

Companies Secretary as Registered Valuer: whenever in the company there is requirement of valuation of any shares of the company, stocks, debenture etc. of the company it shall be valued by the qualified and experience person and a registered valuer with necessary experience Company Secretary in Practice is recognized as a registered valuer.

Companies Secretary as a Corporate Governance: The responsibility for developing and implementing process to promote and sustain good corporate governance effectively and in turn how they can be assisted by the company secretaries. It require specialist skills and technical knowledge and to which company secretary are provided with this expertise and where we can assist and add value.

NCLT has recognized the role of a Company Secretary as a 'WATCHDOG' to ensure Corporate Governance.

Hence, we have different and important roles to play for the corporate and with changing global business environment which not only brought changes in the role and responsibilities for us but has transformed into new dimensions obliterating almost the concept of their role in a company performed by us. Of course with the recents changes which has thrown up the new challenges and opportunities that have spured the professional instincts of CS to identify themselves with the totality of business and managerial responsibilities. Our position enables a holistic view of governance framework and as result we are generally tasked with the responsibility of ensuring that this framework and any supporting policies and procedures are clearly documented. Thus, we have emerged as a Key Managerial Personnel in the corporate management providing solutions to the core management and harmonize the basic decision making process to bring it in line with key factor of the corporate world.

Thus, a company secretaries as a global leader thinks globally, anticipates opportunity, creates shared vision, develops and empowers people, appreciates cultural diversity, builds

teamwork, embraces change, encourage constructive challenge, ensures customer satisfaction, achieves competitive advantage, shares leadership and lives the values.

Hence it can be concluded that pursuing Company Secretary and opting it as a profession and choosing it as a career can be significantly very beneficial professionally and personally and it sure have a capacity to give you growth and wings.

As our honorable Minister of Finance of India Nirmala Sitharaman during 53 foundation day at ICSI said Company Secretary has a very big role to play with ease of compliance being one of the norms.

Kashish Ramnani

Validity of the Doctrine of Frustration in the Realm of Covid-19

The research was conducted to understand the issues faced by the Indian legal system in relation to the Frustration of Contracts during the COVID-19 pandemic. The outbreak had dampened global economic activities and had a potential impact in the performance of a contract. The lockdown initiated by the Government made various contracts impossible to be performed by either of the Parties. Many firms started to invoke the Doctrine of Frustration to avoid paying non-performance penalties on contracts. This research project focuses on various aspects of frustration of contracts and how the Indian Judicial System tackled with variety of applications filed under the same.

What is Doctrine of Frustration?

In General, both the parties in the contract have to fulfil their respective obligations and in the event of a breach, the party who has violated the term has to compensate the other party.

However section 56 of the Indian Contract Act, 1872 makes an exemption to this requirement. Under this section, a promisor who was unable to fulfil his/her obligations due to any impossibility that has occurred after the contract has been made is relieved of any liability under this doctrine and the contract is ruled void.

The Supreme Court explained the Doctrine of Frustration in the case of Satyabrata Ghose v. Mujneerami, in which Justice Mukherjee stated that the basic idea on which the doctrine of frustration is based is that of the impossibility of performance in the contract and the terms frustration and possibility can be used interchangeably. Contracts which are made with widely worded Force Majeure clauses, expresses the steps to be taken and the rights and obligations of the parties in that situation. In the absence of a force majeure clause, examination will be required whether the outbreak of SARS-CoV-2 or the restrictions imposed makes the contractual obligations impossible to be performed. If the situation is such then depending on the facts and situation such parties who are unable to perform their contractual obligations, may have no option but to invoke the Doctrine Of Frustration. Courts may or may not consider the impossibility of performance of obligations under a contract due to lockdown to ipso facto be an event as the lockdown was temporary.

The determination of whether a contract is frustrated is quite subjective.

Following are some circumstances that may constitute frustration in a contract1) In cases where personal capacity is prerequisite for an obligation to be performed in a contract then frustration may be deemed to have occurred. 2) When the obligations in a contract is time sensitive and because of the restrictions imposed by the Government such performance is impossible then such delay performance may frustrate the contract.

3) In cases where method of performing obligations is specified and because of measures which renders the method of such performance impossible then such impossibility may constitute a frustrating event.

The Doctrine of Frustration is usually applied by the court where it finds that the main purpose or the basis on which the contract was actually made was frustrated by occurrence of some unexpected event. If the parties expressly stipulate in the contract that the contract would not be considered as void despite the occurrence of a particular unexpected event, which might affect the performance of obligations in the contract, there can be no case of frustration.

In Taylor v Caldwellii, the case centers around a music hall. The Defendant (Caldwell) agreed to let the Plaintiff (Taylor) take the place for four particular days for presenting a series of four grand concerts. Owing to an accidental fire, in the interest of which neither party was at fault, the hall was destroyed. With this, the plaintiff sued for a breach of the contract. Here, a party's duties, under a contract are said to be discharged if the performance of the said contract involves particular chattels, which due to no fault of either of the parties, are destroyed. This in turn renders the performance impossible, with the doctrine of frustration.

Lord Blackburn held that where performance of obligation was depended on the 'continued existence of a given person or thing' and performance became impossible because of 'the perishing of the person or thing' the Contract was discharged.

No Frustration of Contract Due to Mere Commercial Hardships Commercial difficulties in performing the obligations under a contract will not be covered by the Doctrine of Frustration. If there is any change in the situation where performance of such contract by any party is against the knowledge, expectations and assumptions which were made at the time of entering into the contract but the performance of obligations is not impossible then the terms can be modified mutually by both the parties. In some cases supervening illegality will not make performance of obligations under the contract impossible or illegal but that can surely make such performance impractical or purposeless. For example, there was a contract between the owner of the restaurant and a food distribution company for supply of food items before the lockdown. During lockdown all restaurants were required to close so such a contract of supplying food items to the restaurant will be impractical because of the changed environment created by lockdown laws or public fear of the virus. In such cases further performance is not impossible but they are actually undesirable.

In the case of M/S. Alopi Parshad & Sons Ltd. v. Union of Indiaiii the Hon'ble Supreme Courtof India stated that even though there is an increase in the prices of ghee due the Second World War, the parties in many situations will find such situations where they can't make assumptions or cannot predict the turn of events but still the same will not per se impact the bargain

made by them. So the court even though there was a rise in prices of ghee due to the Second World War, still didn't excuse the party from performing the obligations which the party agreed to during formation of the contract. So it can be concluded that commercial difficulties because of unexpected events and restrictions imposed by the Government during covid-19 will not be considered under the Doctrine of Frustration.

Act of God The most generic clause under most force majeure clauses is the 'Act of God', and the Covid-19 can be brought under the ambit of the same. Also the wordings in contracts are very important as some clauses also provide that the obligations can be put to hold until such force majeure event is resolved. In all cases the burden of proof lies with the party who wants to invoke the force majeure clauses, and the Courts have generally interpreted these clauses in a very strict manner and in the absence of a force majeure clause, any party invokes the Doctrine Of Frustration under Section 56 of the Indian Contract Act, 1872.

Doctrine of Frustration in Commercial Leases As the whole economy was affected severely during the pandemic, many businesses were bearing financial losses due to defaults in payments. Also one more area which was facing such difficulties was the lessors and lessees. There were many businesses which were shut down during the lockdown. On one hand due to no business the Lessee was unable to make payment of the rent to the lessor and on the other hand the Lessor was finding it difficult to waive or postpone rent owed to them. Pursuant with the section 108 of the Transfer of Property Act, when an unforeseen event destroys either the entire or material part of the property; or an unforeseen event that makes the property substantially and permanently unfit for the purpose for which it was let, the lease can at the option of the lessee become void. If a lessee can demonstrate that the criteria in Section 108 are satisfied, simply refusing to pay rent will not excuse the lessee from their responsibilities. The lessee is required to inform the lessor about the same. A lessee can't keep using the property and must immediately return back vacant possession to the lesson. On failure to return such property their liability to pay the rent shall be reinstated.

Conclusion

With widespread disruption in business, manufacturing and transport, due to COVID-19 it was obvious that many companies would have invoked the Doctrine of Frustration of Force majeure. Of course, in such events, the courts and arbitrators will have to evaluate and decide each dispute on individual merits. The parties also had the option to invoke several clauses such as price adjustment clauses, material adverse change clauses, etc. to limit the liabilities arising from non-performance or the partial performance of the contractual obligations. It is clear that a high threshold exists for establishing that a contract is frustrated. In order to reach a definitive conclusion of whether the COVID-19 pandemic constitutes an event of frustration on contractual obligations, a thorough analysis of the contract, subject matter, uncertain event and other such facts is necessary. There is no hard and fast rule as to what event will be deemed a frustrating event by the courts. Now many companies and individuals have sought to place force majeure clauses in commercial contracts and have included the abovementioned words as protection in case they cannot perform their contractual obligations due to COVID-19 or other similar challenges.

Kaustav Chattopadhyay

Moratorium, Intent of Legislature and Judicial Interference:

Moratorium is the word which was first used in the late 1870s which is derived from the Latin word Moratorius which means "Authorizing delay of payment". In legal context, moratorium refers to legal postponement of something especially any monetary due. Besides this, moratorium word is used in various Insolvency and Banking laws of various countries including India. Many countries provide for an automatic moratorium on the existing proceedings once the company enters under the formal insolvency proceedings. The possibility of abuse of the moratorium by the corporate debtor is prevented through the incorporation of suitable provisions and safeguards for the secured creditors. Countries like United States of America and United Kingdom had also incorporated the provisions pertains to moratorium under the U.S. Bankruptcy Code and The Insolvency Act, 1986 respectively.

Section 362 of the US Bankruptcy Code sets out the provisions for an automatic moratorium on the enforcement of claims against the company and its property upon filing of a formal petition under the relevant provision of the code. The moratorium covers all the judicial and administrative proceedings, enforcement of judgments against the company and its properties, acts to obtain possession in the property, create or enforce any lien, collect claims, tax court proceedings etc. However, there is a provision in the law that the secured creditors can apply to the court to lift the stay under the certain circumstances. The period of moratorium may be lifted if it is in the opinion of the court that the corporate debtor has not adequately protected the property in the interest of the creditors during the period of moratorium. Similarly the moratorium may also be lifted against such property of the corporate debtor which is not required for the effective reorganization of the corporate debtor.

Under the Insolvency Act, 1986 of United Kingdom an interim moratorium applicable during the period between the filing of an application to the appointment of an administrator. Further the Act provides for an automatic moratorium of insolvency proceedings. The ambit of moratorium on insolvency proceedings is broad in nature. Under the automatic moratorium, there is prohibition on enforcement of security over company's property, repossession of goods under a hire-purchase agreement, forfeiture by landlord via peaceable re-entry and

institution of legal proceedings against the corporate debtor. However, moratorium in these cases can be lifted with the approval of the administrator or the consent of the court.

In India, the insolvency laws are governed by Insolvency and Bankruptcy Code, 2016. The provision of moratorium under IBC was inspired from the erstwhile legislations under section 446 of the Companies Act, 1956 and under section 22(1) of the Sick Industrial Companies Act, 1984. Pursuant to section 14 of this code read with all the amendments as applicable till date, moratorium is a period whereby it ensures the status quo of the corporate debtor during the Corporate Insolvency Resolution Process. The idea of incorporating this provision in the code was to recognize a bar on the institution of suits, transferring or alienating the property which is in the possession of corporate debtor or to perform any such corporate action which changes the financial status of the corporate debtor. The object of moratorium under section 14 of IBC is to see that no depletion of the assets of corporate debtor during the corporate insolvency resolution process so that it can continue as a going concern. NCLT can declare moratorium period which starts from the date on which the application was accepted by NCLT till the date of approval of resolution plan. The Supreme Court of India in the celebrated case of Innovative Industries Ltd. v/s ICICI Bank held that during the moratorium period, no claim for the debt whether existing or new can be taken place. During the moratorium period the debtors can negotiate with the creditors about the resolution plan and can restructure their debt. During this period, no judicial proceedings for recovery, enforcement of security interest, sale/transfer/alienation of assets should take place against the corporate debtor.

The following acts are prohibited during the moratorium period:

a) Institution of any suit or continuation of any pending suits against the corporate debtor;

b) Transferring, alienating, encumbering or disposing of any beneficial interest of the corporate debtor;

c) Any action to foreclose, recover or enforce of any security interest created by the corporate debtor including any action taken under SARFESI Act, 2002.

d) Recovery of any property by an owner or lessor which is under the possession of the corporate debtor.

e) Entering into any material contract including any contract for availing loans or borrowings.

However, the section specifically excludes the following matters which are not construed as prohibited activities during the moratorium period:

1) Supply of essential goods or services to the corporate debtor;

2) A surety or contract of guarantee to a corporate debtor i.e, personal guarantee;

3) Any transaction as may be notified by the Central Government.

The intent of the legislature behind incorporating the moratorium provision under this code are including but not limited to the following:

1) To ensure that no multiple proceedings have been initiated simultaneously and hence avoids the conflicting outcomes of related proceedings.

2) To keep the assets of the corporate debtor together during the insolvency resolution process so that to maintain the status quo of the corporate debtor.

3) To ensure that the company may continue as a going concern by shifting the management of the company in the hands of resolution professional.

4) To ensure that no assets of the corporate debtor is disposed of or transferred so that the value derived erstwhile shall be maintained.

5) Any matter which is connected therewith or incidental thereto.

Following are the questions which are raised before the judiciary pursuant to the provisions related to section 14 of Insolvency and Bankruptcy Code, 2016:

Can initiation of proceeding be done against the subsidiary company?

In the case of Axis Bank Ltd v/s Alok Industries Ltd., a counsel on behalf of the corporate debtor submitted a petition claiming that, since CIRP has been initiated against the corporate debtor, no proceeding shall be initiated against the subsidiary company under the moratorium order. NCLT has rejected the claim stating the grounds that, moratorium prohibits institution of suit against the corporate debtor and not against the subsidiaries of the corporate debtor. Subsidiary company of the company shall be treated as a separate legal entity in the eyes of law. Thus a moratorium order of a holding company would not restrict any proceeding to be instituted against the subsidiary company.

Can proceedings under Arbitration and Conciliation Act, 1996 is liable to stay?

Hon'ble Supreme Court in P. Mohanraj and Ors v/s M/S Shah Brothers Ispat Pvt. Ltd. 2021, held that arbitral awards are also liable to remain stay during the moratorium period.

Can disclosure of any important information is allowed to third parties?

In M/S Cathar Ltd. v/s. M/s Meenakshi Energy Ltd. 2018, an issue was raised as to whether order issued by arbitral tribunal pursuant to production of completion certificate of project is justified or not. NCLT held that production of any document to third party would not amount to the violation of order of Moratorium since by doing the same it would not affect the status quo of the corporate debtor.

Can court pass order pertaining to unfreezing of Bank account?

In Sandeep Khaitan v/s. JSVM Plywood Industries Ltd., the appellant filed an FIR pursuant to which the bank accounts of the respondent was frozen. The respondent filed an application to the high court for unfreezing of the bank account which was accepted and he high court gave orders to unfreeze the bank account and allowed them to operate their accounts. The Hon'ble Supreme Court held that the high court should have kept in mind the fact that the application of CIRP has been accepted by NCLT and as a result the moratorium period has been commenced. In such scenario, statutory restrictions put under the IBC cannot be overlooked and hence the order of the High Court cannot be sustained.

Can provisions of moratorium is also applicable to personal guarantors?

In Kiran Gupta v/s. SBI and Another, the Supreme Court of India held that, interpretation of the legislature in letter as well as in spirit states that, proceeding under SARFESI cannot be initiated against

the corporate debtor if proceeding under the IBC, 2016 have already been initiated and are pending in the court. But the provisions of moratorium are not applicable to the personal guarantors and hence proceedings can be initiated against a guarantor under the SARFAESI Act.

Can the suits pertain to counter claim also be liable for stay?

In SSMP Industries Ltd. v/s. Perkan Food Processors Pvt. Ltd, Delhi High Court decided that until and unless the proceeding has the effect of such nature which can change the status quo or adversely impact the assets of the corporate debtor, it would not be prohibited under section 14 of Insolvency and Bankruptcy Code, 2016. Hence the counter claim could be heard and decided by the competent court as there is no impact in the financial status of the corporate debtor.

Can IBC override the fiscal laws?

In Associated Decor Ltd. v/s Assistant Commissioner of Commercial Taxes, the petitioner has been served with the show cause notice under section 75 of the CGST Act, 2017 and the petitioner prayed for setting aside the said notice on the ground that the proceedings under GST shall not be continued since the moratorium period has been already started under section 14 of IBC, 2016. It was concluded that the proceedings under GST shall not be continued because of the initiation of the moratorium period. Moreover under section 238 of the IBC provides that IBC would always prevail over any law which is inconsistent with IBC.

Can a IBC override the Indian Constitution?

Though section 14 of IBC freezes the incorporation of fresh suits and continuation of the existing or pending suits and proceedings, the NCLAT in its judgment in Canara Bank v/s. Deccan Chronicle Holdings Ltd., have framed an exception by stating that, moratorium will not affect any proceedings pending before Supreme Court under Article 32 of Constitution of India or any order passed under Article 136 of the Constitution of India. NCLT had also clarified that moratorium would not restrict the High Court for exercising its powers under Article 226 of Indian Constitution. In other words, proceedings under writ petitions may continue during the moratorium period since these are something which directly affects the fundamental rights of the parties and imposition of stay in such proceedings would not be entertained.

Khushi Doshi

Are non-compete contracts void?

Legality of non-compete contracts in India.

In this competitive and modern era, where globalization and modernization are touching the epitome, we realized we need to safeguard our competitive edge and sensitive information like intellectual property, trade secrets, proprietary information services, customers, clients, formulas, salary, price, methods, company structures, ideas, practices, public connection, and marketing strategies. How do we do that? We enter into contracts which legally protect us and these are called non-compete contracts. Now the question arises what are non-compete contracts? How do we use them? Are they legally valid in India?

Today let's ponder on these questions and find our answers to it.

In layman's language non-compete contracts is a legal agreement or clause in a contract that prevents and prohibits the employee from entering into competition during or after the employment or ceases them from revealing proprietary information or secrets to any other parties during or after employment. Employees being the human capital are quintessential for an organization during their course of employment are privy to information which is considered to be highly confidential and therefore in order to keep this information safe and secure there has been introduction of "Non-Compete Clauses" in the Employment Agreements to keep their place in market.

As we know a coin has 2 sides to it the same way non-compete contracts are two sides to them, one being positive and the other being negative. Pros being it protects employers from employees by leaving for any competitor and to share proprietary information, however the contract or the clause should be fair to both and balance interest on both the sides. It inspires new ideas and innovation in addition to this reduces employee turnover because they restrict other employment options and businesses. Now that non-competes are being used there is may be need to provide training and education for their employees to continue innovation, benefiting their careers and market value. On the other hand, it reduces the possibility of seeking better position or to bargain for more pay or benefits when under non-compete. The wait periods are kind of high as they have to wait before they find employment in their fields of expertise. It leaves employees with really few social benefits as compared to employer. The fact that it attracts both positive and negative covenants is well established in case Deshpande v. Arbind

Mills Co which showcases how it includes both sides, that the employee shall devote his whole-time attention to the service of the employers and also a negative covenant preventing the employee from working elsewhere during the term of the agreement.

One of the very important aspects of these contracts are their legality. One of our fundamental right states, Article 19(g) of the Constitution of India provides every citizen the right to practice any profession, trade, or business. However, this right is not an absolute right but comes with reasonable restrictions which are used in interest of public and ultimately kept the provision flexible to ensure that principle of justice, morality, and fairness are aptly applied, depending upon facts and circumstances of each case. Considering the required confidentiality and the integrity of the employments, the judiciary has inclined its view towards giving some regard to the non-compete agreements.

On the contrary from Indian legal perspective, non-compete clause or contract are prohibited under law of contract. As per section 27 of Indian contract Act 1872 clearly mentions that" Every agreement by which anyone is restrained from exercising a lawful profession or trade or business of any kind, is to that extent void." There is an exception to this provision that is One who sells goodwill of a business with a buyer to refrain from carrying on a similar business within specified local limits so long as the buyer, or any person deriving title to the goodwill from him, carries on a like business therein provided that such limits appear to the court reasonable, regard being had to the nature of business." Indian courts have also consistently refused to enforce post-termination non-compete clauses in employment contracts as restraint of trade is impermissible under section 27 of the Indian Contract Act-1872, and have held them as void and against the public policy because of their potential to deprive an individual of his or her fundamental right to earn a living. Therefore, any restrictive covenant that falls under sec 27 of Indian contract Act 1872 is said to be void and considered as restraint of trade as no insight has been offered as to what kinds restraints could be valid and so qualification of reasonable restraints being valid and enforceable has been read into Section 27 by the courts.

We have plethora of judgements where non-compete clause or contracts were accepted under reasonable restriction of the sec 27 of Indian contract Act 1872 and there are cases where strict interpretation of section was done non-compete were strictly prohibited ad not accepted.

Let's shed some light on cases that took sec 27 very strictly and strongly, Superintendence Company of India (P) Ltd. v. Sh. Krishan Murgai (1980 AIR 1717, 1980 SCR (3)1278), in this the main issue involved was whether post-employment restriction should be considered valid and legal or not? The supreme court of India held that in a contract any object or clause that refrains any person of trade is prima face void.

Similar judgments were held in Foods Ltd. and Others v. Bharat Coca-cola Holdings Pvt. Ltd. & others, it is well settled that such post-termination restraint, under Indian Law, violates Section 27 of the Contract Act. Such contracts are unenforceable, void, and against public policy. This case even observed that if cessation of employment is due to the employees' fault even then non-compete would not applicable.

Bombay High Court in the case of Tapas Kanti Mandal v. Cosmos Films Ltd, held that negative restrictive covenant post-

employment period is not enforceable. The facts clearly state that the employee who was working at the post of manager had signed agreements in which no compete clause for 3 years was stated and agreed by both the parties. However, after long term service the manager decided to quit and he had a lot of knowledge about the processes patterns and future plans and guidance of the same. When this matter was taken in court the court did not apply reasonableness as an exception and took a strict approach with regard to enforceability of non-compete clauses.

In one of the landmark cases Percept D'Mark (India) (P) Ltd. v. Zaheer Khan &Ors ((2006) 4 SCC 227) refused enforcement of a post-employment restriction on the grounds of the same being barred by Section 27 of the Act. To share some insight on legality of non-compete clause the court while finely going the trough provision stated Under Section 27 of the Contract Act:

a. A restrictive covenant extending beyond the term of the contract is void and not enforceable.

b. The doctrine of restraint of trade does not apply during the continuance of the employment contract and is applied only when the contract comes to an end.

c. As held by this Court in Gujarat Bottling v. Coca Cola (supra), this doctrine is not confined only to contracts of employment, but is also applicable to all other contracts.

But when looked on the positive side and understanding the need of non-compete there are cases that have liberally interpreted the provision and passed judgment were non-compete was valid till it doesn't violate interest of public or are not too harsh or unreasonable. When non-compete were not allowed and held void that time India was not highly active and participating in modernization and globalization. Since then, the scenario has changed to maintain that competitive edge and secure trade secrets processes and knowledge to stand a chance in market non-compete was a vital step. It was one step towards innovation and better economy by protecting business from losing their secret.

In 1967 Niranjan Shankar Golikari v. The Century Spinning and Mfg. Co. Ltd the supreme court 1967 (AIR 1098, 1967 SCR (2) 378) held negative covenants operative during the period of employment when the employee is bound to serve his employer exclusively are not to be regarded as restraint of trade and therefore, do not fall under section 27 of the Contract Act. A negative covenant that the employee would not engage himself in trade or business or would not get himself employed by any other master for whom he would perform similar or substantially similar duties is not a restraint of trade unless the contract as aforesaid is unconscionable or excessively harsh or unreasonable or one-sided. In simplified words it conveys that if the restriction is necessary to keep business from being exposed and not unreasonable or extremely harsh not considering the employees well-being then it should be held void.

Similar judgment was passed in Brahmaputra Tea Co., Ltd. v. Scarth ((1885) ILR 11 Cal 545) which talks about pre termination phase and says t 'An agreement to serve a person exclusively for a definite term is a lawful agreement, and it is difficult to see how that can be unlawful which is essential to its fulfilment, and to the due protection of the interests of the employer, while the agreement is in force.'

Further in case V.F.S. global services Pvt.

Ltd Vs Mr. Suprit Roy (2008(2) Bom CR 446), it was established that to restrict using od trade secrets while or after the cessation of employment does not lead to restrain of trade as mentioned in sec 27 od contacts act. It depends on facts of the case and the circumstances that decide whether it is valid or not.

In 2006 Mr. Diljeet Titus, Advocate v. Mr. Alfred A. Adebare and Ors (130 (2006) DLT 330, 2006 (32) PTC 609 Del) wherein the Court held that sensitive workplace information can be covered even during the post-employment period. As we know Section 27 of the Indian Contract Act, clearly stipulates that Agreements in restraint of trade are void ab initio. The court's judgments have shown when the restraint is reasonable and in public policy such contracts are permitted and not held void. Who decides the reasonableness? It is the exclusive decision of judiciary and should be considered within the purview of public policy. There is no concrete formula for the same but some factors like facts, circumstances and nature of employment can be considered and further it checked whether they fall within public policy or not. Some of the reasonable restriction may be distance, time limit, trade secrets, goodwill.

As India is evolving and growing day by day, non-compete are being considered and enforced by courts of India. It is well concluded that enforceability of the pre-termination clause has been very settled and as far as post termination is considered is concerned if the clause or contract is reasonable and consistent with public policy. There are contracts like non-disclosure and or non-soliciting but they cannot wipe out the importance of it or replace them. Interpretation of section 27 of contact act is not res integra which is interpretation laid by various courts at different instances should be considered and not just mere reading of provision. If the company does take its former employee to court, it should demonstrate genuine harm to the business.

In the end, competing claims between employers and employees must be reconciled. Making all non-compete clauses illegal tramples upon individual liberty and discourages businesses from investing in their people. This will give us opportunity to expend resources in developing talent. If the company does take its former employee to court, it should demonstrate genuine harm to the business. The recent inclination of the Judiciary to uphold non-compete provisions to an equitable and rational degree is a clear indication of improvement. Therefore changes in the legal, corporate, social, economic context in India and other parts of the globe have modified and grown and the courts have accommodated such necessary changes.

Khushi Gupta

Is the whistleblower regime as powerful as it seems - in India?

Introduction

According to sec 177 of the companies act 2013 in vigil mechanism or the director and employees are to report genuine concerns or grievances about unethical behaviours, actual or suspected fraud, or violation of the company code of conduct or ethics policy for the following classes of company

a. every listed company

b. the companies which accept deposits from the public

c. the companies which have borrowed money from banks and public financial institutions over 50 cr rupees

Schedule 3 of the SEBI LODR Regulation states that the audit committee of the company shall be responsible for reviewing the functioning of the vigil mechanism based upon the recommendation of the SEBI Primary Advisory Committee.

Importance of whistle-blowing

Encourage employees to report any grievances for redressed They are aware of an internal authority so that quick action can be taken to said grievances To demonstrate to employees that the company is serious about the code of conduct through internal control, the risk of damage to the company was reduced

Some types of whistleblowing

Internal: when the whistleblower reveals the wrongdoing to higher authority in the firm i.e; disloyalty, improper conduct, indiscipline, etc are some common topics of internal whistleblowing

External: when a whistleblower reveals the wrongdoing to outside the organisation i.e; media, and public interest groups are some common organisations of external whistleblowing

Alumni: when a former employee of the organisation act as a whistle-blower

Open whistleblowing: this type of whistleblowing occurs when the whistle-blower's identity is revealed

Personal: when an organisation's wrongdoing solely affects one person

Practical implementation

There is no procedure provided under any Indian law for companies when faced with grievances. it is followed by policy, if a such policy exists However when such grievances are received, it is generally filed and investigated based on the issue's nature such grievances have to be redressed before any regulator comes knocking at the doorstep of the company while the company is primarily responsible for implementing the policies, detection of fraud, and control for prevention the onus of good corporate governance regarding this is on the directors or audit committee of the company there was no hard and fast rule for detecting fraud, investigating within the purview of the legal laws

No specific law, no proper implementation of a vigil mechanism

There are no specific statutory regimes in our Indian legal system which can come to the aid of the corporate whistleblower The whistleblower protection act 2014 was considered to be key legislation, the act provides safeguards for those who make disclosures on issues of indiscipline, abuse of power, corruption, mismanagement, etc. however it does not seem aware to private employees.

More and more cases are coming forward where employees, having internally reported unethical practices, find themselves in a difficult situation. Not only are the disclosure ignored but their identity as a whistleblower too is exposed and the workplace is hostile to them.

In large entities, the whistleblower gives information about unethical practices to senior employees even if the same raises fingers against such senior management itself. This is a conflict of interest where the senior management decides how to treat the information.

unfortunately in the terms of the existing legal regime, there seems to be little option for a whistleblower who endures retaliation on account of having blown the whistle however only legitimate route available for the employee - is a civil suit against the employer seeking compensation, but for the unemployed individual to afford court fees which is ad valorem i.e, a percentage of the compensation being sought therefore their rights against large corporations die silently, this is one of those unfortunate instances where maxim Ubi jus ibi remedium i.e, where there is right there is a remedy, is defeated

Why the wirecard scandal is relevant to protect the whistleblower in India

As the number of whistleblowers in India rises, the robustness of the current legal regime for the protection of whistleblowers, which takes into account the Wirecard scandal in Germany, becomes imperative A whistleblower is someone who makes a disclosure that is based on fact, not on assumption, But what constitutes a disclosure? Is it a revelation by a group of employees of wrongful dealing? Or is it sharing of information on an unethical operation by a third party? such an issue needs clarity as disclosure acquires a new dimension given the Wirecard scam. cut to Wirecard AG, the german payment processor that has been embroiled in wrongful misappropriation of money. the auditor in India will introduce more cautionary measures to avoid crises like Wirecard In India, it is general that the management of the company is responsible for implementing whistleblower policies, procedures, and controls. while Indian companies have to find out the balance between policies, malicious complaints, and protecting the information that protects the whistleblower with sensitivity and due seriousness as long as anonymity is assured

and safeguard is available, India will surely register a rise in employee vigilance

Some cases relating to whistle-blowers in india satyendra dubey

The fact of the case-

The first Indian whistle-blowing case was seen in the NHAI project. the whistleblower, Satyendra Dubey was 31 years old IIT Kanpur engineer and IES officer, who was employed at the national highway authority of India (NHAI) while he was engaged in the "golden quadrilateral" national project and was given the charge of releasing funds for contracting firm, L&T had been subletting the contract to the local mafia. And everyone seemed to be engaged in ' loot of public money'.

in the year 2002, Satyendra Dubey wrote a letter to the project director of NHAI but they overlooked it then he wrote the same to the PM and requested to take into account the threat and trouble he may face but the PMO handed those 2 letters to the ministry of highway and road transport without any investigation more than 8 official scanned and passed to NHAI but not responded to it and Satyendra Dubey was shot dead in the year 2003 Aftermath- Nearly 50,000 citizens filed the petition. In 2004, the supreme court of India urged the government to provide administrative machinery for acting on allegations from whistleblowers till the legislation is enacted in response, the government issued' public interest disclosure and protection of information resolution' (PIDPIR). the central vigilance commission was given the authority but the jurisdiction of this commission is limited only to the extent of central government employees, companies owned by the government

Recent campaign regarding vigil mechanism

On 26 August 2022, HDFC Bank announced a new campaign, " VIGIL AUNTY",

which will encourage the public to protect their banking habits. This will corporate with a famous bank campaign, " MOOH BAND RAKHO", which urges the public to keep bank confidential information with others The popular character of this campaign is Ms. Anuradha as a vigil aunty, she will create awareness through videos, reels, etc on safe banking do's and don't. she will motivate others to stay vigilant from fraudsters, and ways to detect cyber fraud commenting on this campaign launching the chief information security officer, of HDFC bank said fraudsters are adopting social engineering to steal money from customer accounts, they are luring customers into sharing their PINs, OTPs and other confidential banking information with them Hence, there must be a need for the banking habits among the customers, as per this we recognize our role in creating awareness among them.

Nowadays customers are increasingly engaging with social media influencers, so we decided to create awareness through this opportunity through vigil aunty named as anu Menon as she is highly affected by her action with command over several languages lead us to believe that she will able to inspire the public regarding the safe habits HDFC bank proactively educating the public relating to banking safeguards or fraud prevention since November 2021 the bank successfully conducted workshops with students, educational institutions, channel partners, etc.

Conclusion

Vigil mechanism is one of the best methods to ensure corporate governance, but whistleblowing is yet to move forward in India. In our Indian legal system still, there is a need for proper law, rules, regulation, and act regarding the vigil mechanism.

Although SEBI LODR Regulation 2015 is mandated for listed companies these authorities still have not focused on the format.

However, there is no mandate provision regarding this for private entities as a result many private companies' employees are not aware of the whistleblower policy and the high probability to be treated unfairly, on the other hand, there were a few private companies that complied with the provision regarding this for good corporate governance.

Suggestions

From the perspective of the employee, there must be the need for appropriate legislation enacted to protect the whistleblower and this gives the employee strength to fight for his equality or this will help to ensure democracy and integrity on behalf of all those whistleblowers, the government has to be passed a proper time-bound ACT regarding vigil mechanism, so that good corporate governance will be maintainable

Khushi Singh

Adaani ACC and Ambuja Cement Merger

Introduction

Companies Act 2013 regulates the formation and functioning of companies in India. The Companies Act 1956 was based on the recommendation Bhabha Committee this act was amended multiple times and in 2013 major changes were introduced the new law is aimed at easing the process of doing business in India and improving the corporate governance by making companies more accountable the 2013 act also introduce new concept such as one person company, small company, dormant company, corporate social responsibility etc. The Act introduces significant changes in the provisions related to governance, management compliance and enforcement disclosures norms, auditors, mergers and acquisition.

Intact provisions

As has already been discussed the Companies Act 2013 has brought various changes in the existing provisions of Companies Act 1956. But there are various key provisions which are left unaltered few examples of these unchanged provisions are amalgamation.

Cross border merger

The Companies Act 2013 under section 234 allows merger/demerger of Indian company with a foreign company but some was prohibited by 1956 Act it is to be notified that the 2013 Act allows merger/demerger with only those foreign companies which have been notified by the government of India an approval of RBI is also required for finalizing these deals.

Fast track merger

According to section 233 of Companies Act 2013 fast track merger is that type of merger where the merger takes place either between parent company and a wholly owned subsidiary.

Since the merger takes place either between two or small companies or between a parent company and a wholly owned subsidiary therefore there is no need of acquiring prior approval from NCLT and not even any approval from any other regulatory body is required in this kind of merger but the central changes is basic ideas of acquisition, merger, disclosure requirement, government compliances have also been introduced by this the 2013 Act. This also intends to encourage the social ethical and environmental responsibilities of the company.

Reasons of merger and amalgamation

- Expansion and Diversification
- De risking strategy
- Scaling up of operations for competitive
- Increasing the market capitalization
- Cost reduction by reducing overheads

Increasing the efficiencies of operations

Tax benefits

Access foreign markets

Key factors about
"ACC-Ambuja Cement Merger"

The holding structure of two companies is quite complex. Lafarge holcim holds 63.62% stakes in ACC Cement via holdering investment which has 4.48% stakes in ACC

After Ambuja Cement took over Holcim India in 2016, ACC became its subsidiary.Ambuja acquired 50.05% of ACC Cement.

After merger and amalgamation Adani will become India's second largest cement producer

The group announced in May to Adani group acquires the stock of the swiss cement major Holcims Indian operating units in ACC and Ambuja cement. According to the latest news available Adani Group has pleadged Rs 81,361 crores in a non-disposal undertaking. The elder son of Gautam Adani ,Karan Adani has been appointed as the chairman and non executive director at ACC. He has also been appointed the non executive director of Ambuja Cements

The Adani Group acquires 63.1% of Ambuja cements along with its related assets. Ambuja's local subsidiaries including ACC which is also publicly traded.

Swiss building materials Holcim , through its subsidiaries holds 63.19% in Ambuja cements and 54.53% in ACC (of which 50.05% is held through Ambuja cements)

Ambuja cements and ACC have a combined installed production capacity of 70 million tones per annum. The two companies together have 23 cement plants, 14 grinding stations, 80 ready mix concrete partners across India.

In may 2022 the Adani group has made an open offer at Rs 385 per share for Ambuja cement and Rs 2300 per share foe ACC. The Adani Group has agreed to acquire Holcims Indias assets through an offshore special purpose acquisition vehicle for CHF 6.4 billion or nearly $10.5 billion. The deal is not just the biggest ever acquisition by the Adani family, it is also Indias largest ever merger and acquisition transaction in the infrastructure and material space. The conglomerate has agreed to acquire 63.19% stake in Ambuja cements and about 54.53% stake in ACC

Ambuja cements board of directors has approved Rs 20000 cr. investment via preferential allotment. This investment will enable Ambuja to capitalize on market growth these steps which are consistent with Adani Group's business logic will significantly accelerate the creation of value for all stakeholders

Thanks to Adani portfolio companies' extensive experience and deep expertise in the raw materials, renewable energy and logistics sectors Ambuja cements and ACC both are likely to benefit from synergies with the integrated Adani infrastructure platform.

Conclusion

On track to become the world's largest and most efficient cement producer by 2030..."This makes cement an exciting business for India's growth which will outpace all other countries after 2050"said Gautam Adani, chairman of Adani Group. Cement will enable significant supply chain efficiencies by leveraging digital platforms to transform economies and manufacturing based on energy cost, logistics and distribution cost.

Furthermore as one of the world's largest renewable energy companies. We will be able to produce high quality cement that adheres to circular economy principles. All these parameters indicate that we will be the largest and most efficient cement producer by 2030.

Komal Chaurasiya

How the board room battle ended up into court room battle

Beauty of any relationship is trust but when that is broken everything falls apart, be it human relations or business relations.

Members may come and go but the company goes on,similarly in a friendship problem will come and go but friendship stays forever, is it same in all the cases?

Whom exactly are we referring to here?

One of the longest and the highest profile corporate legal battle, which is none other than TATA SONS vs Mr. CYRUS MISTRY.

Tata Sons is an Indian Multinational Company founded in 1868 by Jamshedji Tata, company gained the recognition after expanding the business at global level, Tata group is owned by Tata Sons. Tata sons is the holding company and promoter of tata companies. Approximately 66% of the equity share capital of Tata Sons is held by Philon trophic trusts. The next major chunk of approx. 18% is controlled by Shapoorji Pallonji Group, whose heir is Cyrus Mistry.

Cyrus Mistry (herein referred as Mr. Mistry) who has been the Managing director of Shapoorji Pallonji & Company which is part of the Shapoorji Pallonji Group (herein referred as 'SP Group'). He is was the man who was accredited by the Economist as the most important industrialist in both India & Britain

Tata and Mistry shares century of relationship spanning over 3 generation .it all began in 1930, when Shapoorji Pallonji {SP}acquired 12.5% stakes in tata sons. From FE Dinshaw Estate which later increased into 18 % after right issue in 1996, whose successor is Cyrus Mistry.

WHY SUCH BATTLE? the battle aroused when the Cyrus Mistry was asked to step down as a chairman from tata groups, later removed as a director. This abrupt expulsion culminated in all-out war between two major Indian corporate houses and this war struck at very core of the corporate governance principles

Brief Review:

1] Relation between tata and Mistry family

2] Mistry was asked to stepped down as chairman

3] Suit filed against tata groups under NCLT under section 241 and 242 of Companies Act, 2013

4] Mistry failed the battle

In the November 2011 announcement naming Mistry as his successor Tata said, “He has been on the board of Tata Sons since August 2006 and I have been impressed with the quality and calibre of his participation, his astute observations and his humility.”

Ratan Tata finally retired as a group chairman in the year 2012. Mistry replaced him and became the 6th chairman of tata group and the only second to not bear the tata surname. He gave five years to these company as a chairman. His Chairmanship came to an end in the year 2016.He was removed by the board which has been termed as his sudden and unanticipated removal as chairman. The legal battle was to fight for his image. He backfired Tata’s advice following "you should be your own person; you should take your own call and you should decide what you want to".

Golden History

Shapoorji Pallonji group has been an investor in Tata sons since 1960s when it first bought stakes in Tata sons mainly from three siblings of J.R.D stretching over many years.

The relation between tata and Mistry family where since 1920s. where Shapoorji Pallonji group first picked up a stake in FE Dinshaw ltd which is the managing agency commission of the tata iron and steel co. ltd

In the year 1965 Naval Tata and Pallonji, father of Cyrus Mistry started property development firm.

The personal relationship arises when noel tata half brother of ratan tata married Mistry’s sister. but still noel position as a successor remains untold.

Were Ethics followed?

Corporate governance from just being a concept in the books, has today become a practice among corporates around the world. For a company to flourish and at the same time maintain ethical business standards. The word governance is a vital link between the ‘oppression and mismanagement”.

SECTION 241 OF THE COMPANIES ACT 2013 – The section provides relief to the members of a company in cases of oppression. any member of a company has a right to apply to the tribunal if the affairs of the company have been or are being mismanaged and are conducted in oppressive manner damaging the interest of the company. The central government can also make an application to the tribunal under this section.

The companies Act, had also provided specific provision for minority protection and the same were relied upon by Mr. Mistry in his petition to NCLT

On 24 October 2016, Cyrus was in his Bombay House 4th floor office examining what seemed like a routine agenda for the Tata Sons board meeting that was scheduled to start in five minutes at 14:00 hours. Through an informal communication Cyrus has come to know that some of the board members had an unscheduled informal meeting earlier that morning. However, what they had discussed was unknown. The previous week had been business as usual with trips to China and Singapore to meet partners and investors.

One day, Ratan Tata and Tata Sons board member Nitin Noria sunrise him with their presences. Cyrus welcomes and ask them to have a seat. Nitin Noria beings by proclaiming that “Cyrus as you know the relationship between you and ratan tata has not been working “. therefore, Tata trust has decided to move a board resolution to remove you [Mr. Mistry] as a chairman of

tata sons .also he was offered the option of resigning from his position . Ratan Tata says he is sorry that things have reached this stage.

Cyrus Mistry calmly responds to his predecessor that you are free to take it up at the board meeting and said "I will do what I have to do".

In the board meeting held Mistry welcomes Ratan Tata [who had never attended a board meeting since Cyrus had become chairman] to the meeting and informs the board that Ratan Tata and Nitin Noria have something to share prior to considering the previously circulated agenda.

Noria, nominee of tata trust, advises the board that the tata trusts have asked its nominee to propose a motion to the board of tata sons. Amit Chandra, another tata trust nominee, apprises the board that at a meeting of directors held earlier in the day it was agreed to move a motion to request Mistry to step down as chairman because tata trust had lost confidence in him for various reasons but no reasons were provided.

In reply, Cyrus argued that according to the articles of association of the company at least 15 days prior notice shall be provided for the board meeting, and in this case no notice was provided, hence the action was illegal. On this, Amit Chandra stated that such a notice was not necessary and further proposed Vijay Singh to be elected as the chairman for the remainder of the board meeting.

Despite repeated protests by Cyrus on illegality of the event, venue Srinivasan seconded the proposal. Immediately vote was taken with six members voting for and Farida Khambhat and Ishaan Hussain abstained on the motion. Vijay Singh was installed as chair for the meeting.

Shattered Mistry:

On 25th October ,2016 tata sons filed a caveat in supreme court, Bombay high court and national company law tribunal (NCLT) to prevent Cyrus Mistry from getting an expert order against his removal.

On Dec19,2016 – MISTRY RESIGNS FROM BOARD OF ALL TATA COMPANIES.

On Dec20,2016 – MISTRY FIRMS MOVE NCLT ALLEGING OPPRESSION OF MINORITY RIGHTS AT TATA SONS

On Feb 6,2017 – TATA SONS REMOVES MISTRY AS DIRECTOR FROM BOARD

On May 6,2017 – NCLT SAYS MISTRY PETITION NOT MAINTAINABLE, CITIES INSUFFICIENT SHAREHOLDING

On July 9,2018 – NCLT DISMISSES MISTRYS PETITION, SAYS IT FINDS NO MERIT IN ACCUSATIONS

On Sep 21 ,2017 NCLAT by its order allowed the petition of petitioners seeking waiver of limit for filing case of oppression and mismanagement against tata sons taking into consideration certain exceptional circumstances and directed Mumbai bench of NCLT to proceed with the matter.

ALLEGATIONS OF THE PETITIONER

1. Articles of association of the company are oppressive.

2. Huge interference of Mr Ratan Tata and Mr.N.A. Soonawalla in every decision making.

3. The power vested under certain articles were not exercised in a judicious manner and should be struck off in entirety.

1) Lack of corporate governance, which includes an alleged financial fraud at air

Asia India and alleged dubious loans given to C Siva Sankaran by Tata Capital

2) Overpriced Corus acquisition – Tata steel ltd purchased Corus grp PLC for some approximately in excess of USD 12 Billion at the substantial premium, the value of which was more than 33% of its original offer price

3) Continuation of doomed business of Nano Car Project undertaken by Tata Motors upon insistence of Mr. Ratan Tata

4) Use of Tata Sons shareholding in certain Tata Group Companies to requisition EGM for removal of Cyrus Mistry as Director from the Board of Tata Sons.

5) Illegal removal of Mr. Cyrus Mistry as the Chairman of the Company was in violation of law, principles of governance, fairness, transparency and probity.

6) Joint Venture between Air Asia Limited and Tesla Trade place Private Limited entering the aviation sector including possible fraudulent, hawala transactions as indicated in the Deloitte Forensic Report.

7) Actions of Mr. Ratan Tata constitute breach of SEBI Regulations on prohibition of Insider Trading.

Tata sons reply to the petition

(i) Mr. Cyrus Mistry to publicly expressed his displeasure at the loss of his office as Executive Chairman of the company and also to tarnish the reputation of the company.

(ii) Since Ratan Tata played a key role in the business, even after his retirement he deserved to take decisions as it was agreed by all the directors.

(iii) While taking the decision on Corus acquisition Mistry did give his consent in the meeting, why is the decision questioned now and moreover only because of the acquisition Tata steel is the world's 6th largest producer.

(iv) The launch of NANO car by Tata Motors, is a revolutionary aimed at changing the landscape of Indian passengers Car market.

(v) Mistry was a self centred person and always wanted to manage everything on his own and never allowed any other director to participate in decision making and hence he was removed.

(vi) Why did Mistry not point about the Jaguar acquisition and Tetley in which the company was very profitable and successful. It entered agreement with Air Asia only to provide premium service at low cost.

Conclusion:

This article primarily focused upon the dispute between Mr. Ratan tata and Mr. Cyrus Mistry and it dealt with one important question of 'oppression and mismanagement' in relation to corporate governance. This dispute has given us the best example of what 'legacy issues' are and how tactics are being devised to protect the same.

The Tata Group kept blaming Mr. Mistry for loss that Tata Enterprises suffered but at the same time they din't realize that any decision of the Board of Directors required an affirmative vote of the nominated directors of the Trust.

Tata was too loyal to do any wrong. People always trusted him blindly. The power of TATA was such that its stakeholders, customers, employees would never go against him. There is no argument to the fact that Tata did abuse his power. In the eyes of law its evidence which proves it all. Had Mistry focused on the core of Law, tables might have turned.

Kshitij Asarekar

Point of crypto currency

A cryptocurrency is a digital or virtual currency that is secured by cryptography, which makes it nearly impossible to counterfeit or double-spend. Many cryptocurrencies are decentralized networks based on blockchain technology—a distributed ledger enforced by a disparate network of computers.

A defining feature of cryptocurrencies is that they are generally not issued by any central authority, rendering them theoretically immune to government interference or manipulation.

Central to the appeal and functionality of Bitcoin and other cryptocurrencies is blockchain technology. As its name indicates, blockchain is essentially a set of connected blocks or an online ledger. Each block contains a set of transactions that have been independently verified by each member of the network.

Every new block generated must be verified by each node before being confirmed, making it almost impossible to forge transaction histories.1 The contents of the online ledger must be agreed upon by the entire network of an individual node, or computer maintaining a copy of the ledger.

Legality of crypto currency:

Japan's Payment Services Act defines Bitcoin as legal property. Cryptocurrency exchanges operating in the country are subject to collect information about the customer and details relating to the wire transfer. China has banned cryptocurrency exchanges and mining within its borders. India was reported to be formulating a framework for cryptocurrencies in December.

Cryptocurrencies are legal in the European Union. Derivatives and other products that use cryptocurrencies will need to qualify as "financial instruments." In June 2021, the European Commission released the Markets in Crypto-Assets (MiCA) regulation that sets safeguards for regulation and establishes rules for companies or vendors providing financial services using cryptocurrencies.

Within the United States, the biggest and most sophisticated financial market in the world, crypto derivatives such as Bitcoin futures are available on the Chicago Mercantile Exchange. In the past, the Securities and Exchange Commission (SEC) took the stance that Bitcoin and Ethereum were not securities; however, in September 2022, SEC Chair Gary Gensler stated he believes cryptocurrencies are securities. This stance implies that cryptocurrency's legal status may become subject to regulation.

Advantages of crypto currency:

- Cryptocurrencies promise to make it easier to transfer funds directly between two parties, without the need for a trusted third party like a bank or a credit card company. Such decentralized transfers are secured by the use of public keys and private keys and different forms of incentive systems, such as proof of work or proof of stake.

- Because they do not use third-party intermediaries, cryptocurrency transfers between two transacting parties are faster as compared to standard money transfers. Flash loans in decentralized finance are a good example of such decentralized transfers. These loans, which are processed without backing collateral, can be executed within seconds and are used in trading.

Disadvatnages of crypto currency:

- Cryptocurrencies have become a popular tool with criminals for nefarious activities such as money laundering and illicit purchases. The case of Dread Pirate Roberts, who ran a marketplace to sell drugs on the dark web, is already well known. Cryptocurrencies have also become a favorite of hackers who use them for ransomware activities.

- In theory, cryptocurrencies are meant to be decentralized, their wealth distributed between many parties on a blockchain. In reality, ownership is highly concentrated. For example, an MIT study found that just 11,000 investors held roughly 45% of Bitcoin's surging value.

- One of the conceits of cryptocurrencies is that anyone can mine them using a computer with an Internet connection. However, mining popular cryptocurrencies requires considerable energy, sometimes as much energy as entire countries consume. The expensive energy costs coupled with the unpredictability of mining have concentrated mining among large firms whose revenues running into the billions of dollars. According to an MIT study, 10% of miners account for 90% of its mining capacity.

Digital rupee:

The Digital Rupee (e₹) or e INR or E-Rupee is a tokenised digital version of the Indian Rupee, to be issued by the Reserve Bank of India (RBI) as a central bank digital currency (CBDC).[6] The Digital Rupee was proposed in January 2017 and will be launched in the 2022-23 financial year.

Like banknotes it will be uniquely identifiable and regulated by Central Bank. Liability lies with RBI. Plans include online and offline accessibility.

RBI will launch Digital Rupee for Wholesale (e₹-W) catering to financial institutions for interbank settlements and Digital Rupee for Retail (e₹-R) for consumer and business transactions.

The implementation of the Digital Rupee aims to will remove the security printing cost borne by the general public, businesses, banks, and RBI on physical currency which amounted to ₹49,848,000,000

For internal pilot project, RBI started consultation with FIS, State Bank of India, Punjab National Bank, Union Bank of India and Bank of Baroda. On 5 October 2022 the Fintech Department of RBI released a concept note to create awareness on CBDC and the planned features of upcoming Digital Rupee (e₹). The structure of Digital Rupee will be either token-based or account-based. For a token-based CBDC, it will act closer to physical cash and able to perform retail transactions. Account-based CBDC is for maintaining the balance sheet and is considered for institutional level wholesale transactions. For issuance, RBI is

looking at single tier direct model where the central bank keeps control over every aspect of CBDC from account-keeping to transaction verification or a two tier indirect model where RBI issues CBDC to retail banks and financial service providers for wider circulation. RBI is also looking at offline transaction support.

In token-based system, a common public key will be used to initiate the transfer while private key such as user defined password will be used as verification tool to complete the transfer. As per RBI, an e-wallet will be provided for transaction purpose and bank account is not required. While transaction of smaller sums will remain anonymous, larger sums will require self disclosure in compliance with national and global money laundering and economic terrorism laws.

e₹-R will be outside commercial banking system that can help reduce concentration of liquidity and credit risks in payment systems mediated through commercial banks. As per RBI, CBDC will be an additional payment avenue for users and is not meant for replacing existing payment systems. The objective behind CBDC is to support and encourage the growing digital economy, reduce cost of physical cash management, create an efficient monetary payment system and further increase financial inclusion. Digital Rupee is convertible to paper currency without change in value and will show in RBI balance sheet to build trust, safety, liquidity, settlement finality and integrity. To mitigate the risk of introducing a new technology in currency circulation, RBI will design the characteristics of Digital Rupee closer to paper currency and introduce it in a seamless manner. Official launch may happen after 31 March 2023

Digital Rupee for Wholesale (e₹-W) was launched on 1 November 2022. It will be used to settle secondary market transaction in government securities. It will help cut transaction cost and preventing the need for settlement guarantee infrastructure or for collateral to mitigate settlement risk. State Bank of India, Bank of Baroda, Union Bank of India, HDFC

Bank, ICICI Bank, Kotak Mahindra Bank, Yes Bank, IDFC First Bank and HSBC are participating in the pilot project. Shaktikanta Das on 2 November 2022 revealed that Digital Rupee for Retail (e₹-R) will also start similar trial in the same month Each participating bank will test e₹-R among 10,000 to 50,000 people. RBI will collaborate with Pay Nearby and Bank it to integrate CBDC as payment option while National Payments Corporation of India (NPCI) will manage the backend infrastructure.

RBI will also undertake cross border transactions using Digital Rupee during the pilot project.On 1 November 2022, RBI used Digital Rupee to settle Indian government bonds in secondary market transactions worth ₹2.75 billion Indian rupees ($33.29 million). The Phase-1 of pilot project for e₹-R will start from 1 December 2022 in Mumbai, New Delhi, Bengaluru, and Bhubaneswar under State Bank of India, ICICI Bank, Yes Bank, and IDFC First Bank. Ahmedabad, Gangtok, Guwahati, Hyderabad, Indore, Kochi, Lucknow, Patna, and Shimla will be included in Phase-2 under Bank of Baroda, Union Bank of India, HDFC Bank, and Kotak Mahindra Bank. e₹-R will have both P2P and P2M support. A person can pay using QR code. Once e₹-R transferred to individual wallet, small value transactions will not be traced by banks to maintain anonymity.

In November 2022, e₹-W on average did ₹3,250,000,000 worth of deals per day. For the first two days of e₹-R pilot, ₹30,000,000 worth of digital currencies were created by RBI. Unlike physical currency, there is an option for recovery against loss of e₹. In e₹-R pilot phase, RBI is testing specific use cases for P2P and P2M transaction. RBI is

also planning to extend use case of e₹ in cross border transaction at institutional and individual level.As per Minister of State for Finance Pankaj Chaudhary, CBDC in itself will not earn any interest but can be converted into bank deposits. He also clarified that e₹-R is Blockchain technology.

Anaylisis of crypto currency vs digital rupee:

According to the RBI, "a CBDC is a legal tender issued by a central bank in a digital form. It is the same as a fiat currency and is exchangeable one-to-one with the fiat currency. Only its form is different."

But a CBDC can't be exactly compared to cryptocurrencies.

"Unlike cryptocurrencies, a CBDC isn't a commodity or claims on commodities or digital assets. Cryptocurrencies have no issuer. They are not money (certainly not currency) as the word has come to be understood historically," as said in the announcement made by RBI.

The CBDC is the digital avatar of paper currency issued by central banks like RBI and should be exchangeable with cash. The commonly-known digital rupee is a currency that the RBI issues and the digital rupee will have the same function, but it won't be a decentralised asset like cryptocurrencies.

Digital rupee will be a currency issued by central banks responsible for governing and managing the asset.

The digital rupee will be a legal tender, which means you can use it to buy what you want. For example, digital wallets, NEFT and IMPS are examples of digital rupees. So, when the RBI starts circulating the digital rupee, all citizens of India can use it.

By introducing the digital rupee, the RBI expects to address problems associated with existing physical currencies and cross-border transactions.

Cross-border money transfer and converting the money into foreign currency is tedious and expensive. With the launch of the digital rupee, the instant cross-border money transfer is set to make bank cash management and operations more seamless.

In India, cash placement and tracking the same is a challenge. CBDC can address anonymity and resolve it in a non-intimidatory way and reduce the demand for cash. The government will save operational, printing, distributing and storing costs–empowering the government's vision toward a cashless economy.

In simple terms, cryptocurrency is a decentralized form of money with no intermediaries in the transaction process. On the flip side, a digital rupee is a centralized form of money issued and regulated by the RBI.

The digital rupee uses a private blockchain, while cryptos operate on a public blockchain in a decentralized infrastructure.

Users making payments via cryptos remain anonymous. However, it is not the same case with the digital rupee.

Regarding use cases, the digital rupee is just used for payments and other monetary transactions. But cryptocurrencies are categorically both assets and currencies.

The digital rupee responds to inflationary pressure. However, crypto is a currency that acts as a hedge against inflation.

Conclusion:

There is no direct comparison between the digital rupee and cryptocurrency, as both serve different purposes. The digital rupee is a step ahead of taking India towards the digital revolution.

Mallayka Sarkar

ICICI vs Videocon: loans due to relation or strictly professional?

The ICICI Videocon is one of the biggest frauds in the Banking System which brought forward a huge loophole and the case is still going on and new angles are developing every day. This chaos began when Enforcement Directorate (hereinafter ED) registered a Money Laundering case, based on an FIR registered by the Central Bureau of Investigation (CBI) against Chanda Kochhar (former CEO and Managing Director of ICICI Bank), her better half Deepak Kochhar (Co-Founder and CEO of NuPower Renewables Pvt. Ltd.) and Venugopal Dhoot (Chief Managerial Director of Videocon) and others over alleged 'quid-pro-quo' deal between the Kochhars and Videocon group. NuPower Renewables Pvt. Ltd. was started as a Joint Venture between the Kocchars, Dhoots, and Advanis (Chanda's Family). Kochhar is allegedly being accused of Criminal conspiracy, cheating, and breach of ICICI policies for sanctioning loans of nearly Rs. 3,250 Crore to Videocon and its sister companies which later turned out to be a Non-Performing Asset (NPA) on receiving the said Quid Pro Quo.

What the CBI alleges:

The alleged 'Quid Pro Quo' as per the CBI's chargesheet was that several loans were issued to Videocon Group of Companies by the ICICI Bank and the loan sanctioning committee had Chanda Kochhar. Although Dhoot denies having any personal connection with Chanda Kochhar in one of his non-agenda meetings with a financial journalist at Mittal court office, according to CBI's probe the benefit refers to NuPower Renewables Pvt. Ltd. got a Rs. 64 crore capital infusion by Mr. Dhoot after he received the loans from ICICI and later transferred his ownership to a trust owned by Deepak Kochhar for Rs. 9 Lacs. Quoting the report from the Indian Express apparently the Income Tax Department was also investigating the Kochhars about the shady dealing of a residential property in South Mumbai which was related to the whole transaction between them and the Videocon Group.

As mentioned in the FIR there were six high value loans provided by ICICI Bank to Videocon Group the timeframe of the loan went from June 2009 to October 2011 which started right after Chanda Kochhar took over as the CEO in May 2009, here is how the transactions took place that were discovered by the CBI –

the bank gave out a statement that they checked their internal controls and "everything is fine" and they had full confidence in Kochhar denying any wrongdoing on her part and the loans given to Videocon Group were given out through a Consortium led by SBI. Once the authorities became alert to the situation CBI started an internal investigation against Deepak Kochhar and his sibling Rajiv Kochhar.

April 3, 2018: The Chairman of ICICI Bank Mr. M. K. Sharma came to Chanda Kochhar's defence through a press conference stating that the board concluded that she was not involved in any quid pro quo deal and no misconduct on her part.

April 4, 2018: The Serious Fraud Investigation Office (SFIO) filed an application with the Ministry of Corporate Affairs seeking a nod of approval to look into the Rs. 3,250 crore loan to Videocon Group by ICICI Bank.

May 23, 2018: Securities Exchange Board of India (SEBI) served 12 paged show cause notice on Chanda Kochhar and ICICI Bank explaining the loan dealings with Videocon Group and NuPower Renewables giving them till 7th June to put forward their response to the notice.

May 30, 2018: The ICICI Bank Board reversing their previous statement started an independent probe relating to this matter, appointing Retired Supreme Court Judge B.N. Srikrishna as head of the panel.

June 4, 2018: The whistle-blower gave out some fresh accusations against Kochhar, the Bank gave out a statement saying that the CEO was on her annual leave, pending an investigation.

June 8, 2018: Kochhar and ICICI Bank apply for more time to respond to Show Cause Notice issued by SEBI.

July 5, 2018: On her default to respond to the Show Cause Notice by July 7th, SEBI asked Kochhar to deliver her response latest by July 10th. Kochhar and the bank stated the reason for the missing deadline was the absence of documentation to prove the claims.

Oct 4, 2018: CHANDA KOCHHAR STEPS DOWN AS MD AND CEO OF BANK. The Bank acknowledges her stepping down as a "voluntary early retirement" and that none of this would have any effect on the probe.

January 24, 2019: CBI joined in on the case with an FIR against Chanda Kochhar, Deepak Kochhar (her husband), and Videocon group MD Venugopal Dhoot accusing him of irregularities in loans granted.

January 30, 2019: Finally, the independent panel led by Justice B.N. Srikrishna found that Mrs. Kochhar was guilty of misconduct and violation of the Bank's policies and code of conduct in the Videocon loan case. The board said that her leaving shall be treated as "termination for cause".

Feb 2019: CBI issued a lookout notice for the Kochhars and also filed a money laundering case.

Jan 2020: Kochhar Family's over Rs. 78 crore assets provisionally attached by ED.

Mar 5, 2020: Chanda Kochhar filed an appeal against her termination in the Bombay High Court which rejected by them.

Sept 8, 2020: FIRST ARREST made in the case. Deepak Kochhar was arrested by ED in the money laundering case and was released on a personal bond of Rs. 3 lakhs.

Nov 4, 2020: ED filed a chargesheet against Chanda Kochhar.

Feb 26, 2022: With the investigation still going on about the previous cases Chanda Kochhar filed a counter case against ICICI Bank claiming her Retirement Benefits.

May 28, 2022: The CBI filed an FIR against Chanda Kochhar.

Dec 23, 2022: ANOTHER ARREST – CBI arrests Chanda Kochhar and her husband Deepak Kochhar.

Dec 26, 2022: The CBI has arrested Videocon Group Promoter Venugopal Dhoot for alleged irregularities in a Rs 3250 crore loan that Videocon got from ICICI Bank in 2012.

Rumour-mill of CBNC TV18 churned out that Venugopal Dhoot has offered to become an approver in exchange for leniency during custodial investigation
Mumbai court granted CBI Custody till 28th December.

Dec 29, 2022: After hearing CBI which states that it does not need any further custody of all accused and had asked the Court to grant Judicial Custody for 14 days. Court has ordered Judicial Custody till Jan 10, 2023 for all three accused.

What does the defense say:

Amit Desai, Chanda Kochhar's lawyer advocated in the court that the Bank claimed that NO WRONGFUL LOSS TO BANK was caused due to this sanctioning then how does the CBI allege that there was any wrongdoing? He also argues that the case for Money laundering was filed in 2019 and the Kochhars were questioned in July and December of 2022 however, CBI told Chanda that they would be providing information regarding further questioning through the mail and no such mail was received by either Kochhars, yet CBI alleges non-cooperation by them. He also cited the Adjudicating Authority's decision regarding the South Mumbai Apartment which states that there was no merit in ED's case and the property should be released to Kochhars.

Conclusion:

With the Kochhars and Dhoot being in remand till Jan 10, 2022, there have been no further changes in the case. This case has brought to light several questions regarding India's biggest banks and their corporate governance. This just proves that there are several loopholes in the laws which are used by these corporate firms and who is left to suffer the middle class! It should be noted that the sanctioning committee had Chanda Kochhar in it. RBI guidelines require that the audit committee shall sanction huge loans although Chanda Kochhar was not on the audit committee, they also approved the loans so was it Professional or were they in on it too? This also calls for regulators need to keep up and find and tie all loose ends in the law to prevent further corporate mis-administration. Another view can be that as Advocate Desai argued is this all a ploy to drag a businessman to the ground, we have seen the condition of Videocon Company as the Economic Times quoted "Dhoot's downfall: From biz empire to jail cell". Several questions are yet to be answered which will be resolved as the case goes on...

Onella Banerjee

India's Endeavour to join the Data Protection Reform: A Comparative Study with Eu's GDPR

The escalated growth in the digital domain has multiple facets to it, ranging from exponential growth and development to the capacity of having catastrophic effects in the society like the increasingly blurring lines between what is public and what is private. This exact borderless flow of information over the internet is what complicates online privacy and hence lingers the incessant question of whether the concept of data privacy actually exists or whether it is just another urban legend we believe in to reassure ourselves?

The concept of Privacy has been in the news and has been a passionate topic of discussion post the delivery of judgement in the famed case of Justice K.S. Puttaswamy (Retd) v. Union of India which held that privacy is a constitutionally protected right which emanates from the guarantee of life and personal liberty in Article 21 of the Constitution. The fact that that privacy is intrinsic to life, liberty, freedom and dignity and therefore, is an inalienable natural right was unanimously upheld by the nine judge bench of Supreme Court of India. This landmark Right to Privacy judgement not only learns from the past viz overruling the decisions held M.P. Sharma v. Satish Chandra, District Magistrate, Delhi (1954) and Kharak Singh v. State of Uttar Pradesh but also sets the wheels of progress and liberty for the future.

Privacy is an inherent right that all human beings enjoy by the virtue of their existence. This indicates that privacy is not only about the physical body but includes reputation, thoughts and objections, speech and movement as well as consent. Hon'ble Chief Justice of India D.Y. Chandrachud rightfully acknowledged that 'life' under Article 21 does not merely mean "animal existence" but rather includes a wholesome and holistic view which involves a person's right to protect all that he deems fit to lead a dignified human life along with the crucial Right to be Forgotten which came into light in late 2014 after the verdict passed in the Google Spain Case by the Court of Justice of European Union and was subsequently recognized as a broader aspect under Article 21 in India which the right to have publicly available personal information

removed from internet search, databases, websites etc was upheld.

Privacy comes in many forms and has different connotations for different people and scenarios but one of the most relevant aspects of privacy in today's digital world is Data Privacy. It is the process of safeguarding important information from corruption, compromise or loss. Since 2010, there has been an increasing recognition by both the government and the public that India needs privacy legislation, specifically one that addresses the collection, processing, and use of personal data. The push for adequate data protection standards in India has come both from industry and industrial bodies like DSCI (Data Security Council of India) who regard strong data protection standards as an integral part of business, and from the public after getting frustrated with repeated hackings and data theft.

This need for data protection has been identified by governments throughout the world and 137 out of 194 countries have accordingly made laws which suit their needs and requirements. The most notable being Law on Processing of Personal Data by Norway, Personal Information Protection Law (PILP) by China, USA's sectoral laws such as US Privacy Act, 1974, Gramm-Leach-Bliley Act and GDPR (General Data Protection Regulation) by the European Union which replaced the EU Data Protection Directive 1995 in 2018. It is based on seven key fundamentals outlined in Article 5 which arei.

I. Lawfulness, fairness and Transparency

ii. Purpose minimization

iii. Data minimization

iv. Accuracy

v. Storage limitation

vi. Integrity and confidentiality

vii. Accountability

India at the moment has the Information Technology Act 2000 and Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021 which do not talk about data protection in particular but rather focus on e-governance, prevention of cyber-crimes and protection from unauthorised use of computers and computer systems. However the Ministry of State of Electronics and Information Technology has identified the need for legislative overhaul of the aforementioned laws given that India is now entering a trillion dollar digital economy era and open and secure internet is a vital economic aspect of the same . This coupled with the landmark K.S. Puttaswamy judgement in 2017, the Union government set up the Justice BN Srikrishna Committee with the objective of creating and implementing a law to protect India's data sovereignty which gave birth to the Personal Data Protection Bill 2018 (hereafter referred to as the Bill) which was further revised in 2019. The key takeaways from this Bill were that there was to be a Data Protection Authority whose primary purpose would be to protect privacy of individuals.

It clearly chalks out the rights and duties of 'digital nagriks' and lays down rules for data collection when it comes to companies. However there were some major concerns with the same and was also termed to be a "double edged sword" by many as it gave Data Principal Rights to individuals but at the same time gave the government and its agencies wide ranging exemptions, wherein the government could process sensitive personal data as and when required without explicit permission from the said data principals (term introduced to denote those whose data is being collected). The fact that it has just 30

clauses as compared to 90 clauses in the previous draft and that the appointment of the Chairperson and members of the Data Protection Board was entirely up to the discretion of the Central Government was a major area of concern among many others.
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This Bill is a step forward in the path towards creating a 'Digital India' and aims to transform the nation into a digitally knowledgeable and empowered society just like how the European Union aims to do as a consequence of passing the General Data Protection Regulation (hereafter referred to as GDPR) on 27th April 2016 which is considered to be one of the most stringent data security laws around the world. This regulation confers data protection as a matter of right and is applicable to all organizations having an establishment in the European Union along with those establishments which are not established there but access data of individuals from the European Union. In a very progressive move the GDPR includes genetic information, data related to sex and sexual history under its definition of 'sensitive personal information' apart from the usual information related to health and biometrics, political beliefs, race-caste-creed etc. India has taken inspiration from this and implemented it in the Bill along with information related to financial data and transgender/ intersex status if any, increasing the ambit of 'sensitive personal information' as defined in section 43A of the IT Act. The GDPR is as celebrated as it is because regulation of data transfer for commercial purpose is not its only objective rather it further goes on to confer protection to persons in all scenarios wherein their data is being processed and elaborately defines 'consent' for the same. It says that consent must be specific, informed and freely given in an unambiguous and affirmative manner in its Article 5 and 6. It specifically stipulates criteria for 'lawful data collection' which is missing from the IT Act 2000. While Rule 5(7) of the IT Rules 2011 gives the data provider an 'option' to redact information, Article 7(3) of the GDPR gives explicit 'right' to data providers to withdraw consent and erasure. India is yet to go a long way in meeting global data protection norms but is faring pretty well by way of proposing futuristic and stringent requirements on data collection agencies when it comes to acquiring and storing data of children. The Bill sets the age threshold of being considered a child much higher than that in the GDPR i.e., 18 as compared to GDPR's 13. It also puts a blanket ban over data profiling of minors along with mandating verification of age of children along with obtaining parental consent in all scenarios which is something that is absent from the GDPR.

The wide scope of the GDPR is proven by the fact that it requires data processors and collectors not established in the EU to appoint a representative if they are involved in large scale data mining which is a provision which is missing from India's data protection laws but at the same time it falls behind the Bill in requiring social media intermediaries to allow its users to check and verify their account and choose to hide data from them as and when they deem necessary. In this fast paced world where anything and everything is easily accessible on social media this robust provision has come just in time. A significant factor in the easy going nature of the IT Act is that it contains a majority of civil liabilities barring a few like sections like 69 to 73 which place criminal liability on corporate bodies who breach data security provisions. It imposes a fine of not more than five lakhs or imprisonment upto 3 years or both as opposed to the whopping 4% of annual global revenue of the undertaking or administrative penalties upto 200 million euros for violation of GDPR principles. However data fiduciaries are subject to fines upto Rupees 500 crores for noncompliance along with an extensive list of penalties which would range upto

Rupees 250 crores under the Bill.

The GDPR as we know it today has evolved over a prolonged period with social media and exposure of data growing by leaps and bounds and while India is a late entrant in the regularization in the laws relating to privacy and data privacy in particular, we must applaud the government for taking the necessary steps and corrective action in the form of the Data Protection Bill. Its initiatives to implement and design a similar law in India which will have far reaching consequences in the sealing the rights of the citizens regarding how their personal data would be used is sure to turn a new tide in the distant future.

Piyush Targe

The Maharajah lands back in his palace

Being the brainchild of India's first licensed pilot in India to its nationalization Air India has faced a lot of turbulence in its entire journey. In October 2021, Air India was handed over to Tatas through its SPV named Talace Private Limited in an 18,000 crores deal. So, let's understand the journey of Air India from Tata to Tata.

Founded in 1932 by Jehangir Ratanji Dadabhoy Tata (J.R.D. Tata) and Nevil Vintcent, Air India initially was a weekly airmail service between Karachi and Madras via Ahmedabad and Bombay. J.R.D. Tata was the first licensed pilot in India and was convinced by his friend Nevil Vincent who was a former World War 1 pilot between 1914 to 1918 when he came to India in 1920. The British officials first refused to fund the airline but when Sir Dorabji Tata intervened and asked for permission and not a single penny to start the airline, they agreed to grant the permission. J.R.D. then piloted Air India's first flight from Karachi to Bombay with a break at Ahmedabad on 15th October 1932. At its beginning, it had two single-engine puss-moth aircraft which were selected by Tata himself. When Tata piloted the first flight, he piloted the flight using railway lines which 8 hours as it was traveling at speed of 50 miles per hour. It started its commercial operations in 6-seater merlin from Bombay to Trivandrum at a ticket price of Rs. 256 (Rs. 15,360 today) 6 years later it was renamed Tata Air services and Tata Airlines later on. In July 1948, it was separated from being a department of Tata Sons Ltd. And was incorporated in the form of a Public limited company. At this time, it was named as Air-India International via a poll by employees of Tata Sons. In its first year of operations, it flew around 300 flights covering a distance of over 2,60,000 km. from Karachi to Bombay carrying 10 tonnes of mail and 155 passengers. It accounted Profit of Rs. 60,000 in the first year which was around a 30% return on the total investment of Rs. 2,00,000. In June 1948, it launched its first international flight from Bombay to London.

In 1953, Air India along with 8 other airlines was nationalized through the Air Corporations Act, 1953 either by merging them into Air India or Indian Airlines. Under section 18(2) of the Act, the business of Airlines was made illegal with severe punishments. The Government of India enhanced its stake from 49% which was acquired in 1947 to 100% in 1953. Despite being

appreciative of the venture of J.R.D Tata on several occasions, then PM Jawaharlal Nehru took the decision of nationalization.

When J.R.D. asked him anything about the nationalization or further management of the airlines, he would just look at the window to which J.R.D. got his reply. The Nehru government wanted to control the airline sector in India and thought that it would be better to nationalize it. The Maharajah is now Nationalized! Even after the nationalization, The Government of India appointed J.R.D. Tata as the Chairman of Air India and Indian Airlines. He chaired both companies for a tenure of 25 years from 1953 to 1978.

He paid attention to every single detail in the management of the Airline while he was managing more than 50 companies in the Tata Group and dedicated half of his time to it. His efforts made the Airline one of the top 3 most profitable airlines in the world till 1980. Because of its luxury and world-class service was known as the 'Palace in Sky'. The King and Queen of Sweden, Pope Paul 6th, and Chinese premier Zhou Enlai traveled through Air India and were surprised by its luxury. Especially Chinese premier Zhou Enlai traveled to Indonesia by Air India as China did not have a long-distance airline at that time. Thai Airlines started keeping Air India as its model airline. Air India was the first Asian airline to include Jet Aircraft Boeing 707-420 named 'Gauri Shankar' in February 1960. The Famous Maharaj Mascot was designed by Bobby Kooka and Umesh Rao who were artists in an advertising agency JWT in 1946. It was used in the advertisements of the airlines along with 4000 art pieces which were acquired by the airline foradvertisement purposes. The collection is known as 'The Maharajah collection' and was built over more than six decades by JRD Tata's philosophy of "putting a little bit of India" in the booking offices of erstwhile Tata Airlines. The Art pieces were very rare and were made by world-famous artists such as Jatin Das, Anjolie Ela Menon, M F Husain, and V S Gaitonde. In the 1970s the management of Air India was so great that it achieved great heights in the Global aviation sector.

On New Year's Day of 1978, the Boeing 747-200B named 'Emperor Ashoka' crashed in the Arabian sea within 101 seconds of its takeoff which killed 213 passengers onboard including the cabin crew. PM Morarji Desai then dropped the J.R.D. Tata from the Chairmanship and placed Pratap Chandra Lal (Ret. Air Chief Marshal). The Airline was then managed by officers of Civil aviation and IAS officers with no aviation experience. When PM Indira Gandhi came into power, she reappointed J.R.D. Tata to the Board but not as the Chairman who then continued till the age of 82. In 1986, Ratan Tata was appointed as the chairman by then PM Rajiv Gandhi. Ratan Tata Chaired the Airline for 3 years till 1989 post which, Air India faced a loss of Rs. 120 crores in 1990-91. In 2003, India experienced the debut of low-cost Airlines when Air Deccan started its services. By 2006, Kingfisher Airlines, SpiceJet, Paramount Airlines, GoAir, and IndiGo had started their operations and Air India's strategy of focusing on international flights rather than the domestic market led to a fall in its market share. Air India was also losing its market share in the international market as other domestic private players were tying up with other to offer connecting international flights at a lower price. Air India clocked a small profit of Rs. 16.29 crore in 2005-06 and Indian Airlines posted an Rs. 49.50 crore profit. Both the airlines had a debt of 5000 crores while the other private players were substantially investing in expanding their operations to new horizons. Air India started falling behind the domestic and international airlines. In 2005, The Government of India placed orders for 111 Boeing aircraft when the actual requirement was 11 only. The deal amounted to Rs. 50,000 crores when the turnover of Air India was Rs. 7000 crores only. Later on, the Comptroller and Auditor General of India report stated that the

Boeing contract was one-sided and had no negotiations. The clause for delay of the delivery of aircraft on side Boeing was also absent. The number of employees was 11,433 when the actual requirement was 7245. Due to this, salary expenses arose and the airline defaulted in payment of salaries to employees which lead to strikes demanding salaries. All these errors inflated the loss to Rs. 230.97 crores during 2006-07. In March 2007, Air India and Indian Airlines posted a loss of Rs. 541.30. To overcome the loss and debts in both entities the Government formally announced the merger of Air India and Indian Airlines into a new company called National Aviation Company of India Limited. But the plan didn't go the way it was planned and the combined entity posted a loss of Rs.2226 Crore in 2007-08. Post the merger of Air India and Indian airlines the company has not posted a profit for a single year till its nationalization. In 2019, Air India posts a net loss of 12.8 billion rupees which is the highest since the merger in 2007.

Due to increasing losses and debts in the entity, the Government of India on 28th June 2017 approved the privatization of Air India and issued an expression of interest to dilute a 76% stake in Air India and a 50% stake in AISATS, a ground handling joint venture with Singapore Airport terminal services. But this was not the first time when disinvestment in Maharajah was taken on record by the Government. When the aviation sector was opened for private players in 1994, the Air Corporations Act of 1953 was repealed. In 2001-02, the Atal Bihari Vajpayee-led National Democratic alliance tried to sell a 40% stake in Air India to raise funds. It was a part of the privatization policy along with 27 other firms but none of them were actually sold. Tata Sons showed interest to invest in the airline at that time along with Singapore airlines but later on Singapore airlines decided to pull out, and the plan ultimately faded away. The 2017 Expression of Interest stated that the new owner would have to take up the debt of Rs. 33,392 crores but no private firm showed interest in buying the debt-laden airline. This was the second failed attempt to privatize the Maharajah. Having failed previously, the Government again decided to sell a 100% stake in Air India and Air India Express and 50% shares of AISATS to attract more bidders. The government transferred the debt of Rs. 30,000 crores in Special Purpose Vehicle called Air India Assets Holding Limited and issued expressions of interest respectively. The most significant bids were placed by Tatas and a consortium led by Ajay Singh, the principal shareholder of SpiceJet Limited. Finally, on 8th October 2021, the Government of India declares Talace Private Limited (an SPV of Tata Group) as the new owner of Air India. The deal was closed at an Enterprise value of 18,000 crores out of which the Government will get Rs. 2700 crore upfront. Post the takeover Tatas will own a 100% stake in Air India and Air India Express and 50% in Air India-SATS. Air India had accumulated losses worth Rs 83,916 crore as of March 2021 and a total debt of Rs 61,562 crore at the end of August 31. Of that, Rs 46,262 crore of debt will remain with government entities. Tata Sons will assume a debt of Rs 15,300 crore.

Tatas will also get 141 planes and rights to 173 destinations (55 International). After the declaration of the results, Ratan Tata tweeted "Welcome Back, Air India" to celebrate the homecoming of Maharajah.

So, this was an amazing journey of India's first airline which touched greater heights under the leadership of JRD Tata. From its nationalization to facing a crisis in 2019 where the government had to either sell the airline or close it, the homecoming of Maharajah is a moment of joy for the entire Tata Group.

Rachit Mohini

Cryptocurrencies In India Regulated Or Decentralised

Cryptocurrencies have taken the world by storm. In just a few short years, it has gone from a fringe concept known only to a select few, to a mainstream financial phenomenon that is capturing the attention of investors, consumers, and governments around the globe. January 3, 2009, it was a cold misty morning when the first block of Bitcoin was mined1, it was coded by an individual or a group of individuals using the pseudonym Satoshi Nakamoto. This one transaction is what led to the cryptocurrency revolution, its rise has been nothing but meteoric.

In just a few short years, it has garnered a devoted following, attracted billions of dollars in investment, and spawned a host of new technologies and industries, and now every day around $12 Billion is transferred using cryptocurrencies, but to make sense of how we got to where we are now, we need to first understand what cryptocurrency is.

Cryptocurrency is a digital or virtual currency that uses cryptography for security and is not backed by any central authority, such as a government or bank. Cryptocurrencies are decentralised systems that allow for secure online transactions through the use of a public ledger called the blockchain. The blockchain is a distributed database that maintains a continuously-growing list of records called blocks, which are secured and linked using cryptography. One of the main attractions of cryptocurrency is its decentralised nature, which means that it is not controlled by any single entity and is resistant to censorship. This makes it a potentially attractive option for individuals or organisations that want to make financial transactions without the need for intermediaries, such as banks, financial institutions,or any other regulatory authority.

Despite the potential benefits of cryptocurrency, it has also faced criticism and controversy.

Some have raised concerns about its use for illegal activities, such as money laundering, tax evasion, and drug trafficking, due to its anonymity and lack of regulation. Additionally, the volatile nature of cryptocurrency prices has led to speculations, it has been both hailed as the future of finance, and denounced as a dangerous and volatile investment.

Cryptocurrency in India has a short but clamorous history. Here is the timeline of events around Cryptocurrency in India.

- 2013 Unicoin a Bengaluru-based startup, launches India's first cryptocurrency trading platform, allowing Indians to buy, sell, trade, use, and store Bitcoin.

1 Mining refers to ensuring that transactions are valid and added to the blockchain, the process of mining is how new cryptocurrency is created.

- 2017 The Reserve Bank Of India(RBI) issued a press release warning the citizens against the use of cryptocurrency3. In April 2017 an Inter-Disciplinary Committee was constituted by the Ministry of Finance to submit a report on the status of virtual currencies(VC). This report was submitted on July 25, 2017, and recommended warning the public that (i) virtual currencies are not considered legal tender, and (ii) all activities being carried out by exchanges and by individuals must be stopped. Two writ petitions were filed before the Supreme Court of India with one of them seeking a complete ban on VCs and the other to consider the prohibition/regulation of Vcs4

- 2018 RBI bans all financial institutions dealing with entities transacting in cryptocurrency, effectively putting an end to the entire asset class of cryptocurrency. In May 2018 Cryptocurrency exchanges in India approach the Supreme court, filing a plea to reverse RBI's decision of banning Cryptocurrency.

- March 2020 The Supreme Court Of India overturns RBI's decision of banning Cryptocurrencies5.

- February 2022 The Hon'ble Finance Minister Smt. Nirmala Sitharaman introduced the provision in Union Budget 2022-236 to tax all Virtual Digital Assets(VDA) including Cryptocurrency @ 30% p.a as Capital Gains. The Cryptocurrency and Regulation of Official Digital Currency Bill, 2021 is yet to be introduced in parliament regarding cryptocurrency and crypto transactions, in which Government will clear its stand on the legal status of Cryptocurrency in India as merely the taxation of cryptocurrency gains can't be considered as legitimization. Following the speech by The Hon'ble Finance Minister, on 28th April 2022, the Indian Computer Emergency Response Team (CERT-in), operating under the Ministry of Electronics and Information Technology issued Directions under sub-section (6) of section 70B of the Information Technology Act, 2000 relating to information security practices, procedure, prevention response and reporting of cyber incidents for Safe & Trusted Internet.

These Directions were issued to augment and strengthen cyber security in India, requiring service providers, Intermediaries, data centers, body corporates, and government 3 The Reserve Bank Of India, Writ Petition (Civil) No.000406 of 2017 5 Writ Petition (Civil) No.000528 of 2018 6 Ministry Of Finance, organizations to mandatory report all cyber security incidents to CERT-in. The directions directly impact the blockchain, Web37 and VDA8 industry. Attacks or malicious/suspicious activities affecting systems/servers/ networks/software/ applications related to blockchain, virtual assets, virtual asset exchanges, and custodian wallets have to be mandatorily reported within six hours of knowledge of such incident. Further, all virtual asset service providers, virtual asset exchange providers, and custodian wallet providers are required to mandatorily maintain all information obtained as part of Know Your Customer (KYC) procedures and records of financial transactions for a period of five years. The Virtual Asset Exchanges are the gateway for most retail investors, and enthusiasts to interact with the global VDA markets and tend to interact with a large number of entities, regulators, and businesses.

Some key developments in law and enforcement that have impacted how Exchanges conduct business are as follows:

- The term "Exchange" is now defined as "any person that operates an application or platform for transferring of VDAs, which matches buy and sell trades and executes the same on its application or platform", as per a circular9 issued by the Central Board of Direct Taxes (CBDT).

- the new tax regime for VDAs places certain obligations on Exchanges, which will now need to comply with a number of taxation provisions as specified in The Information Technology Act, 2000, government notifications, and CBDT circulars.

Cryptocurrency As Legal Tender - Regulations and Judgements A legal Tender is a coin or a banknote that is legally tenderable for the discharge of debt or obligation10. Currencies that have legal tender status are backed by the government that issues them, meaning that the government will accept the currency as payment for taxes and other debts. In the absence of any specific legislation, cryptocurrencies and other VDAs, are neither regulated nor prohibited. Individuals and entities are permitted to hold it, invest in it, and make transactions in VDAs, provided they comply with existing laws while doing so.

Further banks or other entities regulated by RBI will need to carry out due diligence processes in line with existing laws and regulations applicable to financial service providers

As per Section 2(47)(A) of the Income Tax Act, a Virtual Digital Asset (VDA) includes cryptocurrency, Non-Fungible Tokens (NFTs), and any other digital asset notified by the central government in the official gazette.

Central Board Of Direct Taxes, Circular No. 13 of 2022, governed by RBI. On August 02, 2021, The Finance Minister stated in the parliament that "The Government does not consider cryptocurrencies legal tender or coin and will take all measures to eliminate the use of these crypto-assets in financing illegitimate activities or as part of the payment system. The Government will explore the use of blockchain technology proactively for ushering in a digital economy."11 Recently, in July 2022, the Finance Minister remarked that before banning or regulating cryptocurrencies, international collaboration would be required so as to prevent regulatory arbitrage, stating that "any legislation for regulation or for banning can be effective only after significant international collaboration on evaluation of the risks and benefits and evolution of common taxonomy and standards."12 Taking into consideration a judgment passed by The Supreme Court Of India in the year 2020, highlighting the nature of cryptocurrency and other Virtual Currency(VC) "VCs do not have the status of a legal tender, as they are not backed by a central authority, but what an article of merchandise is capable of functioning as, is different from how it is recognized in law to be. It is as much true that VCs are not recognized as legal tender, as it is true that they are capable of performing some or most of the functions of real currency."13 Digital Rupee - India's Digital Currency The RBI has consistently supported the creation of India's own Central Bank Digital Currency(CBDC), which has recently received an enabling legal framework in the form of amendments to the Reserve Bank of India Act, 1934(RBI Act), and a special mention in the Finance Minister's Union Budget 2022-23 speech. In this speech, the Finance Minister introduced the nation to the concept of the "Digital Rupee", a CBDC that will increase the impact of India's digital economy. She further stated that the CBDC will also "lead to a more efficient and

cheaper currency management system". It is in this context that the Finance Minister proposed the introduction of the Digital Rupee, "using blockchain and other technologies, to be issued by the Reserve Bank of India starting 2022-23".The Finance Minister's Union Budget speech was coupled with specific amendments to the RBI Act, 11 Ministry Of Finance, Lok Sabha Unstarred Question no.2138,

12 Mint, Cryptocurrency: RBI seeks to ban, but India needs global support to regulate it, says FM,

13 Writ Petition (Civil) No.000528 of 2018 which expanded the definition of the term "bank note" to mean a bank note issued by RBI, whether in physical or digital form. This amendment opens up the door for RBI to issue its own CBDC.
The anticipation is that the impending legislation will seek to regulate VDAs based on their functions and uses. It may prohibit the use of VDAs as "currency", "money" or means of exchange while permitting their use for all other applications.

Regulating a decentralised cryptocurrency?

Cryptocurrency has decentralized nature which makes it resistant to censorship and fraud, as there is no central point of control, it relies on a network of computers to verify and record transactions instead, the intermediaries may be directed to function as per the directions of the government however the Crypto-products remains decentrasied. In the meantime investors and traders are free to buy and sell cryptocurrency but using cryptocurrency to settle payments for goods and services or to pay government dues, may attract legal implications, as Foreign Exchange Management Act, 1999 doesn't recognize Cryptocurrency. The only certain thing is that cryptocurrency has already had a significant impact on the financial industry, and it will likely continue to shape the way that we transact and exchange value in the future.

Ritika Bhattacharya

Shareholder's rights-supreme or jeopardized

Shareholder is an individual or an entity having been recognized as the legal owner of a company.(There lies a difference between member and shareholder but for the purpose of this paper we're considering shareholder as the member of the company)

"member", in relation to a company, means— [section 2(55) of companies act,2013]

(i)the subscriber to the memorandum of the company who shall be deemed to have agreed to become member of the company, and on its registration, shall be entered as member in its register of members;

(ii)every other person who agrees in writing to become a member of the company and whose name is entered in the register of members of the company;
(iii)every person holding shares of the company and whose name is entered as a beneficial owner in the records of a depository

Powers and priveleges of shareholders:

1. Appoint officers

2. Remove a director voting rights

3. Right to call for general meetings

4. Right to proxy representation

5. Challenging resolutions

6. Information

7. Oversight:

8. Amendment of aoa or moa

9. To receive dividends

10. Transfer of shares:

11. Winding up of the company

Additional rights:

1. To make recommendations about the Company´s good corporate governance, through written requests filed before the Shareholders and Investors Service Office.

2. To present proposals to the Board of Directors, jointly with other shareholders, under the terms defined hereunder.

3. Ensure other shareholders do not compete with the company etc [Powers and Duties of shareholders under Companies Act (no date).

A shareholder's ownership and control is proportional to its shareholding. Based on this pattern of shareholding shareholders in a whole has been categorized into-

- Majority Shareholders
- Minority Shareholders

In context of this categorisation and further analysis of the current legal scenarios, legisltions and modernization of outlook, following can be rightfully justified-

· Shareholders do hold the most supreme position in matters relating to companies formal and public performances and the same has also been connoted in various legal provisions.

· Board of directions being elected by the shareholders are required to act in their wisdom and according to the instructions of the shareholders, which is also preserved by the legal provisions.

In short theoretically shareholders have been given immense power which are preserved by concepts like Shareholders Activism, Shareholders Democracy, Shareholder Primacy.

Corporate Governance principles have also preserved and acclaimed that Shareholders rights are supreme and hence have gone ways to encourage this implementation.

Diverting from the theoretical spectrum it could be observed that there are circumstances where these principles protecting and uplifting the shareholders supremacy has been given less to no importance and this questions

Whether shareholders really holds so much significance?

1. It is well acknowledged and understood that there is a major diversion between the functioning of the corporate world and the legislations which is not always detrimental. In major situations it is because of the lack of awareness about legal provisions. Although 'Ignorance of law is no excuse' but most shareholders invests with the mere intention of investments and hence are unaware of their basic rights and powers. Most of them may also not have knowledge about the management which runs it company. This sheer oblivious and ignorant attitude had slowly and gradually transferred the powers of shareholders (minority) to management which is ultimately run by the majority shareholders who therefore conducts the affairs of the company in a way to suffice their own needs and intentions.

2. Companies Act ,2013 have various provisions which if duly implemented shall make the shareholders regain their supremacy and together help in companies prospects. In comparison to earlier occurrences it has been observed that shareholders now have become more pro-active and keen implement their share of power. The few lines from this articles does justice to the above statement-

'Shareholders have voiced their dissent in many instances by voting down executive remuneration packages. For example, Tata Motors (2014), Apollo Group (2018) and Kinetic Engineering, Cyient and Balaji Telefilms (all in 2021). Further, in 2021, the shareholders of Lupin voted down changes to a stock option plan.'[Reference List Narayanan, N. (no date) The shareholder rights and activism review - The Law Reviews.

3. Likewise various other events had occurred which showcases the huge diversion of ideology among modern day shareholders. They have become much more aware about their rights and have

moved ways in implementing such power. But power provided should be regulated and harnessed otherwise it may take a toll creating detrimental circumstances like –

The Zee-Invesco saga- the shareholders activism enhances the good corporate principles but on the otherhand sometimes it can also run against the law of land, similar 'circumstance have arisen between Zee Entertainment Enterprises Ltd (Zee) and its institutional investors, which includes Invesco Developing Markets Fund (Invesco) and OFI Global China Fund LLC (OFI).

The dispute began when Invesco (Invesco currently owns 11% of Zee). and OFI, investor-shareholders in Zee with a 17.88 per cent stake, issued a requisition notice on September 11, 2021, to Zee to call an extraordinary general meeting (EGM). (An EGM can be requisitioned by a shareholder holding atleast a 10 per cent stake). The requisition notice, amongst other things, sought the removal of Punit Goenka, the current MD and CEO of Zee, as a director and contained six resolutions seeking the appointment of six named individuals as 'independent directors'. As per the law, Zee would have had a 21-day window from the date of issuance of requisition notice until October 3, 2021 ['Korada, H. and Rajasekaran, V. (2022) Rising shareholder activism in India.

This act of shareholders does showcases the amount of power they hold and that even though the management is concerned with the daily affairs of the company, it is the shareholders whose opinions are kept supreme and that shareholders are now more informed about their powers. This sudden but positive spurt of shareholders activism and shareholders primacy may have its roots to the economic recession ,pandemic session which created huge changes in the law provisions which brought the company to under various scrutiny which in turn lead to more informed investors.

4. Informed investors correlates to more power- The shareholders were never kept devoid of any power or right. Their indifference attitude and obliviousness took to a belief that they were shadowed and that the management has more power in regards to the decision making. Erstwhile scenarios did create a vicious belief that shareholders presence were only required in Annual General Meetings (AGM) where they only had the task to nod to the resolutions announced without giving any explanation. But at recent times there has been a shift from that ideology and the shareholders have been very proactive. With the introduction of virtual meetings facilities the attendance of shareholders have also vehemently increased since previously the proximity of distance between their residential location and the meeting place created a hindrance to their attendance.

In light of the following few instances it shall not only portray the amount of power the shareholder possess but it shall also become an undisputed fact that the shareholders are the supreme of all the other stakeholders and that their opinion in the recent times does not only depends on the shareholding but on various other factors-

Big investors reject exec pay proposals

1. The latest episode in the rising tide of shareholder activism is the striking down of Eicher Motor Ltd's proposal to give a 10% raise to its managing director Siddhartha Lal amid the pandemic

Over the past two months, shareholders, including foreign institutions and mutual funds, have overwhelmingly voted against the remuneration proposals for the chairmen of Hero MotoCorp Ltd, Bajaj Auto

Ltd, and Balkrishna Industries Ltd.

2. Tata Motors, which sought approval for former chief executive Guenter Butschek for about four months to June 30, institutional shareholders have voted against all resolutions seeking higher numeration for chairmen and managing directors of the four companies.

Few other notable cases which perfectly explains the power and supremacy the shareholder possess and which they utilized to put forward their grievances

• In Cyrus Investments pvt ltd. Vs. Tata sons ltd.

• Brookefield Technologies Pvt. Ltd.

• Shanti Prasad Jain v. Kalinga Tubes

• Sidharth Gupta & Ors. Vs. M/s. Getit Infoservices Pvt. Ltd. & Ors

• Vikram Bakshi and McDonalds India Private Limited:

[Hartmann, M. D. (2014) Shareholder activism: Benefits and drawbacks. Pieterlen, Switzerland: Peter Lang AG.]

Through the above few cases it can be understood that shareholders do own supreme power however a thorough review of the cases does shows that there was no distinction between the minority and majority shareholders. Even though this was well settled in the Foss v. Harbottle

Case wherein it gave the minority the right to address their grievances in certain circumstances and consequently the functioning of the majority shareholders could be questioned and challenged.

So this brings to the questions that shareholders even though holds the supreme and undisputed power in regards to the functioning of the company DOES MAJORITY SHAREHOLDERS REALLY OWN THE COMPANY?

Among shareholders there are differences and disputes regarding the actual owner of power. As this power defines who owns the maximum say in the management for the functioning of the company. The majority shareholders who has invested the maximum and substantial amount of money in the company theoretically owns the maximum power but through the various

changes in the legislations and also in the corporate environment there has been occurrences which proves that minority shareholders also have equal say in the company and their opinions stands equal to the majority shareholders.

This shall remain a never ending fiasco as both crave the power to channelize the management according to their own whims.

Thus after a thorough analysis in this paper I would like to produce a brief exploration of the facts to re-enforce the statement proven rightfully and justifiably above that shareholders are the supreme in the broader sprectum and there has always been a differences regarding the holder of more power between majority and minority shareholders.

- Shareholders being the owner of the company has the maximum power in regards to the functioning of the company. The Board of Directors of the company are selected and ratified by the shareholders and they even though are the one of runs the company their workings are ultimately required to be ratified and approved by the shareholders and they are to function in the interest of the shareholders.

- Erstwhile times the shareholders were

indifferent and oblivious about the functioning and management of the company which did made only the separate category of shareholders to run the company according to their own decisions. But in the recent times the shareholders have become more aware about their powers and responsibilities and likewise have started to implement it. Companies Act ,2013 have rightfully preserved the rights of share through concepts like shareholders activisim,

Ritika Yadav

A Co-Location Scam Revealed A Big Sham

Co-location makes high frequency trading easier. This implies that you receive price feeds a fraction of a nanosecond faster than the rest of the market. The broker must install a co-location server at the exchange in order to receive that slight advantage. Let's examine the connection. High frequency trades are really facilitated by the co-location of servers on the exchange (HFT). Through algorithms, this HFT in turn makes it easier to execute sophisticated trading strategies. Only with co-location and HFT does algorithmic trading start to truly benefit traders.

A former MD and CEO of NSE, one of the world's biggest exchanges, was sharing confidential data and taking advice on sensitive business issues from a 'Himalayan Yogi' via email (rigyajursama@outlook.com).

Between 2012 and 2014, some NSE executives and a broker, OPG securities, had colluded to profit by accessing trade data from servers ahead of others.

For her involvement in ignoring the unauthorised installation of black fibre connections to the exchange's co-location trading engines, Chitra Ramakrishna was fined Rs. 3 crores by SEBI.

It's important to keep in mind that there is no way to demonstrate that any investors or traders lost money as a result of this scam. According to the SEBI order from 2019, OPG Securities and its directors were required to return unfair gains of 15.7 core with interest starting on April 7, 2014. That is how much notional loss, if any, other privileged trading members in the co-location facilities have actually experienced.

The key conspirators in this scam are several brokers who used the NSE Co-location trading systems illegally in an unfair manner another set of key conspirators are those officials and insiders in NSE who aided these brokers in their illegal means and unfair access, then there are several researchers who are high profile economist in India who are consultant to the finance ministry and professors at Indira Gandhi Institute of Development research as per SEBI's investigation report.

The NSE was not sharing crucial data with any other market participants that they were sharing with some researchers so this data was taken from the NSE under the reason of research and these researchers had password access to NSE servers which is what has come out in SEBI reports. So they stole this data and based on the data they created software that could give unfair access to NSE co-location servers, these

software were used by various brokers to connect to the NSE trading systems and that trading generated them a lot of profits, it has come out in various investigation reports and forensic audits that when they were connecting to NSE via the old system that was prevalent between 2010 and 2014 they were making higher profits compared to when there were certain tweaks made to the system, so this clearly shows that unfair access to NSE co-location servers was involved.

Chitra Ramakrishna was chosen by the illustrious S.S Nadkarni of the IDBI to be a member of the team that established NSE in 1992. After the Harshad Mehta Scam of 1992, which damaged the reputation of the Bombay Stock Exchange, this became required. NSE established a transparent screen-based trading system in 1994 to overcome this. The ones with minimal volumes were all eliminated by SEBI's directive that all

exchanges must have a computerised system of trade, with the exception of BSE. By the time Chitra took over the NSE was the sole competitor to the BSE, soon she developed a reputation for competence and stood out as a formidable leader and began to be called 'Queen of markets'. It seemed to be going well until 2015, when a letter reached SEBI from Ken Fong, alerting the regulator about a "Co-Location" Scam.

NSE allows large brokers to legally put their own servers in the exchange's premises (Co-location) and connect to their main server, an international practice. But NSE also had a back-up server which comes into play when high trading volumes slow down the main server. The scam was because some brokers accessed only the faster back-up servers, giving them milliseconds long head start during trading. And milliseconds can change fortunes in high frequency trading. As the face on the US $100 Bill Benjamin Franklin once said 'Time is money". But it was not until a 2nd letter from Ken Fong in 2016, alleging irregularities with Anand Subramaniam's appointment, that SEBI finally investigated the matter. SEBI had Chitra questioned in camera, by a legal team of the AZB Partners, under the supervision of a team of psychiatrists. Here she told her interrogators how she had first met the 'YOGI' on the banks of the river Gangs 20 years ago. But that she still did not know his real name and acted through she had no need to know either. AZB submitted a report which stated that Anand Subramanian was pretending to be the Himalayan yogi in his emails to Chitra.

By 2019, SEBI wound up their investigations finding no trace of fraud or unfair trade practices, just lack of due diligence. But still fined her 3 crores, for failing to maintain the highest standards of personal integrity in discharging her duties. While NSE was asked to return back 625 crores profit they had earned, along with interest. Much later in 2021, brokers who had made money, were made to cough up in excess of 35 crore and debarred from trading for 5 years. However, it was the salacious emails between Chitra and a mysterious yogi, that caught the imagination of the media. Some contained NSE's confidential internal workings. At first it was assumed that Chitra had passed on company information to an outside party, a serious issue. Allegedly, when Sankaran Banerjee, chief technology officer of NSE, saw that an outsider's email was intruding the system. But more skeletons tumbled out of the closet as the investigations wore on, things which SEBI never revealed at first. That despite warnings given in 2014, companies continued to access NSE's backup server for 134 days before action was taken. Fearing she could be sacked, Chitra smartly resigned in December 2016. Two months earlier, Anand had also left, wiping out his digital footprint completely from LinkedIn and other social media. Sensing SEBI had

let Chitra off the hook very easily, it soon acquired a political angle.

Sucheta Dalal who had earlier exposed the Harshad Mehta Scam, blew the whistle on the NSE co-location scam as far back as 2015, but none in the mainstream media picked up the news. In fact, NSE sued Money Life for 100 crores for writing defamatory articles but Sucheta Dalal won the case and a 50 lakhs compensation. Finally, as always, it was the Delhi high court's action (in 2021), based on a PIL filed by journalist Shantanu Guha Ray in august 2017, that jolted the CBI awake. Income tax and CBI teams jumped in after a furore by opposition parties and the media, by sending lookout notices against the duo. But before the CBI could lay their hands on Anand, he had already destroyed his laptop through which emails were exchanged between Chitra, yogi and him. However, they still managed to retrieve some emails through Ernst & Young earlier report, and two of them had geotagged images, conclusively proving yogi's and Anand's address as one.

The court also did not buy her story, believing it to be made-up to mislead the investigating agency. CBI is now questioning the role of CTO Murlidharan Natarajan, who was responsible for putting in place the co-location architecture and reported directly to Chitra NSE has stabilised since, under the capable hands of Vikram Limaye, still foreign investors dumped the unlisted NSE stock in January, selling most of their holding below rupees 2000 a share, when just months earlier it was trading at over rupees 3000. SEBI is in a damage control mode. While the person who was once regarded as the jewel of the NSE, is now behind bars, denied any special privileges.

SNACO who carried out the secretarial audit of NSE had raised the issues with regard to the re-designation of Mr. Anand Subramanian without the approval of NRC and without noting thereof by NSE board.

SEBI needs to bring perpetrators to book, it will restore investor confidence in the markets. India is a country which is known for the law of the land, FYIs come to India with billions of dollars and they invest in this country because they know there is law of the land which prevails over everything else and that is the confidence which people have shown, retail investors have shown towards India's market and this kind of a scam shakes up that confidence, so to restore that confidence SEBI need to bring the perpetrators to boom and to do that it has to understand the various aspects of the scam.

And there is enough evidence to establish that unfair access was provided by these exchanges. Investigation and interrogation of NSE officials revealed that there were agreements between the researchers and the exchange to share data with them which were not shared with anybody else. These agreements were not stamped, no date of agreement, no witnesses, no notary. And all this was possible only because the officials of NSE allowed it.

So, in order to restore investor confidence, we should have a robust system, a system which people will trust. It is necessary to restore that trust in India's market. This scam is much bigger than the Harshad Mehta and Ketan Parekh what they did to the stock market. And all this just because of milliseconds of trading advantage that they got. The trading systems we all can see due to the technical glitches it is enough to show how bad India's trading systems are, our infrastructure is creaking, it needs a massive upgrade it needs a massive overhaul, it needs good people experience hand which you are not bringing to NSE even now a lot of politics is being played over the appointment of MD and CEO of the NSE even in the face of the fact that

there is good hand available who can do this, who can manage this. BSE had come on the verge of being shut down in 2009, in 10 years BSE has come to a level where it is not going to shut down, it is fighting, it is worthy of competition, that is the kind of development we need in India's stock exchange space and that will attract a lot of foreign institutional investors to India, when they will see that the systems are fair.

SEBI can do a comprehensive study of how this scam went on, identify all the loopholes with complete overhaul of policies. SEBI needs to take the officials to be accountable for such activities. However, looking at SEBI's order it can be seen that it is shielding and protecting the officials. Which in turn is making the Indian exchange space unattractive for the foreign investors. Policies are required, strict vigilance is required, setting an example is required.

Rohit Rahalkar

Panama Papers story of a Tax Haven

The Panama Papers leak is a very significant event in the world of money laundering & Tax evasion. On Apr 3, 2016, the newspaper Süddeutsche Zeitung (SZ), released over 11.5 million encrypted confidential documents that were the property of Panama-based law firm Mossack Fonseca. Many famous Indian celebrities, politicians, and entrepreneurs were mentioned in these papers.

To completely understand how the Panama scandal was carried out we must first understand some key components of money laundering:

- **Tax Havens :**

Countries like Panama, the Cayman Islands, and Bermuda, allow foreign entities &wealthy individuals to park their money without any tax or by charging minimal tax. These countries also maintain confidentiality so that more & more people would park their money in their country.

- **Shell companies:**

Just as a turtle uses its shell to hide, shell companies are used to hide funds or carry out some business anonymously, or evade taxes. Unlike a normal company these companies do not have any employees or managers nor do they earn any income their only purpose is to conceal illegal business or illegal income.

- **Black money:**

In layman's terms, black money refers to that sum of money on which tax is not paid or which is earned through illegal means.

Now that we have understood the components of money laundering, lets us further understand the stages or the process of money laundering:

- **Placement:**

This is the first stage of money laundering wherein the black money is parked at places such as tax havens where it will be easy to mask the origin of this money &such a sum of money can be brought back into the regular flow of the economy as clean money. This is usually done through hawala transactions.

- **Layering:**

After the black money is parked in tax havens or similar places, it is now further divided into smaller sums of money and invested into multiple shell companies in form of assets, loans, etc. This is the most important step to conceal the origin or source of black money. This is all possible because of the strict confidentiality policy

of tax haven countries &some banks.

Integration:

This is the stage where black money enters the regular flow of the economy as clean money. This is done by showing fake transactions or by entering into fake agreements with the shell companies so that the black money reverts as clean money in the form of business transactions.Now finally we can delve into what was Panama papers all about & how they exposed the network of more than 214,000 tax havens involving people and entities from 200 different nations.

What was it?

Panama papers were documents that contained financial information about many wealthy individuals, politicians, world leaders, celebrities, sportsmen, and businessmen who were engaged in tax evasion & money laundering. The Panama papers also contained the names of many Indian celebrities, businessmen & criminals.

How it was exposed?

In 2015 a person calling himself "John Doe", approached Süddeutsche Zeitung (SZ) with over 2.6 terabytes of information relating to numerous tax havens, and offshore accounts of many politicians & wealthy individuals in these tax havens. John was an employee of "Mossack Fonseca" a law firm situated in Panama. He said that reason behind such whistleblowing is income inequality. This is considered to be the biggest data leak since 1970 till the leak of Pandora papers where around 12 million documents were leaked.

Upon further investigation, SZ found out that all the persons mentioned in the documents given by "John Doe", were clients of a law firm situated in Panama by the name of "Mossack Fonseca".

After verifying the legitimacy of the data SZ asked the International Consortium of Investigative Journalists (ICIJ) for further help in the investigation because of the quantity & gravity of the data involved. In 2015 journalists from 107 media organizations situated in 80 countries analyzed these documents.

This team of journalists also had 25 journalists from India working for "Indian Express". These journalists worked day & night to investigate the documents and also maintained confidentiality about such proceedings & their findings.

While analyzing these documents the journalists found out that Mossack Fonseca has created around 214,488 offshore entities & is one of the top organizations in creating shell companies for tax evasion & money laundering purposes.

The team of journalists further found out that Mossack Fonseca started creating offshore companies in 1977. Mossack Fonseca had created around 113648 offshore companies in the British virgin islands & around 48,360 companies in Panama itself. even though the data shows otherwise, Mossack Fonseca came into the picture only after Ramón Fonseca merged his small law firm in Panama with another local firm headed by Jürgen Mossack. To manage all the offshore companies Mossack Fonseca worked with over 14000 banks, company incorporators, law firms &other intermediaries

Operations of Mossack Fonseca were so out of control that even after the leak they failed to identify the owners of 70%of the companies created by them. "It shouldn't be acceptable that a firm like this doesn't know the owner of one shell company, let alone thousands of them," said Jack Blum,

a U.S. attorney who specializes in tax fraud and money laundering. Blum said that there was no record of who owns what, which "tells you how far the shell business has gone in terms of being a sham. It strikes me that it's as crazy as crazy can be."

After thoroughly analyzing & verifying all the data ICIJ published all the documents on April 2016 & exposed Mossack Fonseca's work spanning from 1977 to 2015. This action by ICIJ shook up the world of many politicians, world leaders, businessmen, celebrities & sportsmen. These documents contained many important names around the globe such as Iceland's prime minister Sigmundur David Gunnlaugsson, the prime minister of Pakistan Nawaz Sharif, some members of Russian president Vladimir Putin's inner circle, family members of China's elite politicians, This leak also had some Indian names in it such as celebrities like Amitabh Bachchan, Aishwarya rai, Ajay Devgan, billionaire property baron Kushal Pal Singh, billionaire Gautam Adani's brother Vinod Adani, and billionaire real estate magnate Sameer Gehlaut.

Significance of Panama papers leak for India:

25 journalists working for "India Today" were part of the team of journalists of ICIJ which released the "Panama papers". Many Indians were listed in the Panama papers including Amitabh & Aishwarya Bachchan, CEO of DLF Kushal pal Singh, deceased drug kingpin Iqbal Mirchi, Shishir Bajoria from West Bengal, and Anurag Kejriwal, former chief of the Delhi Lok Satta Party. Around 500 Indians were mentioned in these documents.

Action taken by the Indian Government:

As a response to the leak of the Panama papers, the Indian government constituted a multi- agency group comprised of officers from CBDT, FT&TR, FIU & RBI. The purpose behind the constitution of this group was to conduct speedy investigations against Indians listed in Panama papers having undisclosed assets abroad and also having an unexplained income.

At the start of June 2021, this multi-agency group identified undisclosed assets amounting to ₹20,078 crores (US$2.5 billion), as a result of its investigation. In the aftermath of this investigation, 46 cases were filed & CBDT collected ₹142 crores as tax from persons under prosecution. Mossack Fonseca used around 234 Indian passports & 300 authentic addresses.

Worldwide consequences of the Panama papers leak:

The uncovering of Mossack Fonseca's illegal activities & the leak of the Panama papers was the biggest success for data journalism. Politicians & world leaders in around 80 countries were listed in the Panama papers such as Mauricio Macri former President of Argentina, Nawaz Sharif former Prime Minister of Pakistan, Sigmundur Davíð Gunnlaugsson prime minister of Iceland, Ravindra Kishore Sinha BJP Member of Parliament of the Rajya Sabha, Anurag Kejriwal, former president of the Lok Satta Party.

Governments around the world were able to recover more than $ 1.2 billion after the leak of the Panama papers in 2016. United kingdom has collected over $252 million to date, the government of Australia has collected around $92 million, and the Indian government has been able to recover 153.88 crores to date. After the leak of the Panama papers, the former Pakistani prime minister Nawaz Sharif was sentenced to 10 years of imprisonment along with a fine of

$ 10.6 million, for charges of corruption.

Nawaz Sharif's daughter & son in law were also sentenced to imprisonment of 7 years & 1 year respectively. The Prime minister of Iceland resigned from his office following massive protests & political pressure. The government of Germany launched multiple raids on the country's biggest banks for suspicion of moneylaundering, tax evasion &fraud. The leak of Panama papers made prosecution of Jan Marasalek(who had ties with Russian intelligence agencies) & international fraudsters David and Josh Baazov.

Why people evade taxes & how it affects the economy:

In India, we have a progressive taxation regime i.e. a person has to pay more tax with the increase in income, e.g. if a person priorly earned rupees 300,000, he had to pay tax @5% but now that he is earning rupees 12,00,000 he would have to pay tax @ 30%. This regime discourages many people from paying taxes as they have to pay more tax if they start to earn more, hence they tend to find means to pay minimal or no tax. Here cosultantants and advisors become catalysts for tax evasion as they convince their clients that the best way to pay zero or minimal tax is to engage in activities of tax evasion. A country's economy can function properly only when all the citizens are paying taxes honestly & regularly. Since wealthy individuals & corporate giants pay the most amount of taxes, the burden on a common taxpayer is less, however, if these people start to evade taxes the government of that country will have to increase the overall tax rates & which will severely hurt the financial position of a common taxpayer.

How tax haven countries can be annihilated:

To hinder the functioning of tax haven countries or to discourage them from engaging in such activities, all the governments of countries around the globe shall make a united stand. All the countries shall sign a memorandum of understanding allowing the exchange of information within these countries. Another way to hinder the progress of tax-haven countries is to put up certain sanctions on them if they deny to cooperate or, deny to disclose information with regards to shell companies or undisclosed assets.

Roshni Mahato

Swis Bank : Shedload of Riches

introduction :

Switzerland ,a small landlocked mountainous country known for it's Swiss alps , glacial lakes ,delicious chocolates ,where the grasslands are fruitful with grocery and wild flowers ,where the people are contented with themselves and their surroundings .A country which is a house for number of banks renowned for reserving huge amount of wealth ,guarding itself by the country's old age secrecy laws. Swiss people don't flaunt their wealth ,the country is often in the economic news as one of the richest in the world with one of the highest GDP of over 830 USD Billion.There is more to Switzerland than luxury watch brands like Rolex.

Histories and chronicles :

The Swiss economy started to take off some time around world war 2, while other countries in the Europe had suffered total collapse due to the war. Switzerland economy began to bloom .The country's decision to remain neutral in war played a major role in economic success .They used this chaos for its benefit .While some people will bring morality to this topic by saying that everyone should follow Switzerland's stance when it comes to war ,But one should realize that every country can be seek into a war too ,But in different way .They provided weapons while everyone was busy killing each other and a safe place to store their wealth .In short Switzerland non-participation was more of an economic decision than a moral one.

Nazi's did not steal any from Jews ,but from everyone and they stored it in the Swiss Bank. According to reports the Swiss National Bank knowingly took in about $400 million in looted gold between 1939 and 1945 in violation of international law .On other side German interest in Switzerland's bank was for business purpose .By 1941 German had exhausted all it's foreign exchange and central Bank gold bullion. German stopped the transportation of Swiss goods through it territories for three weeks .This affected the supplies of coal, iron and steel to Switzerland which was needed to produce weapons, which they were supplying both sides. On 1st July 1941 the Swiss reached an agreement with the German government in the form of Swiss-German cleaning agreement. This helped the German disguised in credit which they need to repay to Swiss manufacturers for weapons to fight the war. Swiss which made lenient with there credits which made them accumulate 850 million in Swiss francs by 1942.This relationship allowed the Swiss to supply the Nazi's with war material, without the risks of allied bombing.

Emergence of law :

There was neither banking secrecy codified at national level or any national governing banking in Switzerland .Over the centuries a distinctive relationship of trust between the Swiss bank and their customers were

developed which made banking secrecy an unwritten law. During the early 1930's major Swiss Banks had seen severely affected by the 1931 German banking crisis. Banks throughout Europe were spied upon to prevent evasion of the taxes that had been introduced in many countries .So, were the Swiss Banks, at the target of French and German.

A question always arise how Swiss banks is called as tax heaven? So, all the answer to it lies in the Article 28 of the Swiss Civil code that ensures the right to privacy. This includes privacy extends to information concerning a person's economic situation or their financial relationship. Swiss Bank is prohibited from disclosing client data to third parties, violation of this is a criminal `

offence. This security is extended even if you leave your bank. But in case of any criminal proceeding such as tax fraud, bankruptcy a Swiss judge can order the Bank to disclose their client information .But due to increasing pressure by foreign government between 2008 and 2017,to provide information of suspected people for evasion and fraud having their account in Swiss Bank to discover such to the government. The client of Swiss Bank are entitled to receive information related to their relationship with the bank. Through power of attorney one can grant access to other bank account .If the account holder dies the legal heirs is entitled to information on such accounts.

The ingenious : numbered bank accounts

How can one not be acquainted of anonymous numbered Swiss Bank's account shown in Hollywood movies such as "Walk Street: Never Sleeps (2010)" where Jakes comes to view Gorden as a father figure, he learns the hard way that Gekko is still a market manipulator who will stop at nothing to achieve his goals, even following a long prison for insider trading. These numbered accounts are bound to number and not a name. A heightened level of securities applies therefore any interaction with the client is done by numeric identifier. The bank conducts its due-diligence to know who is behind the bank account. Today, one can use numbered accounts for ordinary uses such as hiding money from spouse, ex-wife, family, creditors etc. Many South Americans and Russian clients uses such accounts to protect themselves from kidnappers, blackmailers and other criminals extorting money in their home countries. If one has a membered account then they should avoid transaction outside Swiss territory because the name of the report in case of payment outside Switzerland .As long as your fund, are located in Swiss territory the most severe data protection law in the world and Swiss Banking secrecy gives you protection.

Present day : a land lock of pelf

As of 2018,there are majorly 400 securities dealers and banking institution in Switzerland mainly there are two big banks Union Bank Of Switzerland(UBS) group AG being the largest and credit Swiss Group AG being the Second most largest bank.

Swiss Bank is known as safe heavens for the wealth of dictators ,arm dealers, tax cheats of all kinds .Accordingly to media and Swiss federal prosecutor's office, during 1990's and early 2000's AL Qaeda members had in the Swiss bank including with USB a total of $683Billion in Macros Fund to the Philippines treasury in 2004. The Economic Times noted that popular culture portrays Swiss Bank accounts as "Completely anonymous". later adding this is simply not true". The Economic Time October 30, 2014 .

Swiss bank has been mentioned by many Hollywood films. James Bond in the world is not enough (1999).Says "If you can't trust a Swiss banker then what's the world comes

to?"

In Wolf of wall street(2013)Belfort travels to German to meet Jean Dujardin a provide banker who advices him to and account in the name of relative in order to avoid US taxation, as it is technically legal in Switzerland ,as Belfort was not charged with any financial crime. Belfort's client "confidentiality was waived because Saurel traveled outside Switzerland and later was arrested in US for money laundering , which being illegal in both countries.

Swiss crypto :

The increasing evolution of crypto market ,and performance of the some of the top crypto currencies many people look into crypto trading. Switzerland is the home to several digital assets fund and product manager have track records of atleast 10 fund and have more than $1Billion in total assets. The acquisition of crypto finance group Dentsche Borse ,valuing the firm at 3 digit Million ,clearly proves that Swiss digital assets is gaining international recognition. Swiss crypto bank is a brokerage brand which has created a hype around, it provides competitive spread, low commission and easy withdrawal. Swiss crypto bank offers access to trading assets from five largest market including forex market ,crypto currencies, commodities, indices and shares.

Advantages of having a swiss bank account :

Besides ,all the mystic ,investment in Swiss bank have many positive prospect. Over the years, Swiss bank has earned a great reputation due to it's stable political situation, banking privacy principle, preserve sovereignty. The country has a rock –solid economy, any international economics strive has negligible impact on Swiss banking. Any person just require a valid passport or government issued ID ,be 18 years of age ,a minimum deposit of USD 2,50,000 – 10,00,000.In the event of natural calamities Swiss banker association gives surety that all accounts are completely insured in the event of catastrophic loss on the Swiss bankers end. There exist zero inflation in Swiss franc. The reason behind is that they do not depend on Euro-Franc exchange rate but also other currencies like US Dollar .It is calculated by 'Trade-Weighted Rate'. This is the rate that we pay for shopping basket which contains various currencies like Euro or US Dollar etc.

Indian money parked in swiss bank :

In a major boost to Modi Government fight against blackmoney, Switzerland will send details were closed previously. India is among 75 countries with which Switzerland's Federal Tax Administration (FTA) has exchanged information on financial accounts within global standards framework on Automatic Exchange Information (AEOI). In 2011, the National Council of Applied Economic Research (NCAER), conducted a study on black money, has estimated wealth accumulated outside India is between USD 384 Billion and USD 40 Billion during the period from 1980 to 2010. According to the latest study by OCED's global forum on transparency and exchange information for tax purposes reported, India to be among the top three countries which is getting detailed information from Switzerland on bank accounts and beneficiary ownership of entities established by their resident in Alpine nation marking a key milestone in Indian Government fight against black money by letting a complete data and information of real estate properties owned by Indians.

Funds parked by Indian Individuals and firms in Swiss Bank including through Indian-based branches and other financial institution jumped to a 14 year high of 3.83 Billion Swiss francs(over Rs. 30,500 crore) in

2021. It is uncertain how much black money Indians have put in overseas bank. According to some estimates, a total of $1006 trillion to $1.4 trillion dollars is stored unlawfully in Switzerland. According to Swiss Banker Association and Swiss government, these figures are erroneous and manufactured, and the total amount held in all Swiss bank accounts by Indian Individuals is around US $ 2billion. `

Hawala transaction:

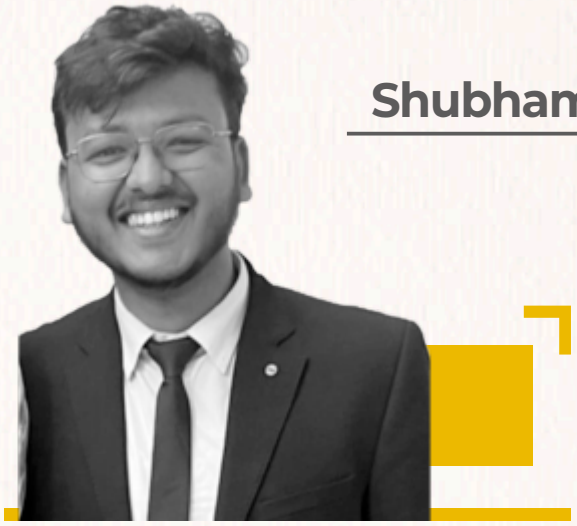
Hawala is an informal, unregulated mode of transforming foreign currencies to and fro in a country. This system works and operates in similar fashion to the formal banks without any paper work and accountability. In India it is declared an illegal way of transferring money by the Foreign Exchange Management Act, 1999. Hawala system comes under one of the branches of money laundering, which means hiding the origins of illegal money obtained without paying appropriate tax.

Hassan Ali Khan scam: the biggest tax evasion

Hassan Ali Khan is an Indian businessman. In 2007 his Pune and Mumbai residency was raided by Income Tax department , they found a laptop containing details of Swiss bank which had ten bank accounts details with deposits of Rs.20,000 crore. He had connections with international arms market. He was one of the biggest hawala operator in India, who used to ship the money of big politicians and businessman to countries like Mauritius and Madagascar, then again bring that money back to India as an investment in companies like Autum holding and Payson ,which were shell companies. Supreme Court invoked terror charges under Anti-Terror law, unlawful activities, Prevention Act and under Indian Penal Court.

Conclusion :

Swiss Banking secrecy is often citied as major cost of the nations financial success but Switzerland is not the only country with such laws .It is fare to say that all nation with developed financial market have similar laws that protect the confidentiality of bank customers. Where Switzerland differentiate itself as nations willingness ability and determination to adhere to and defend these laws. However a strict and penal provisions need to be implemented which will lower such malpractices and tax evasion and it's fraudulent use.



Shubham Rungta

K-10 Scam- The Unheard Stock Market Rictus!

Introduction

The Indian Stock Market, in small doses, can act as fuel to move us sky-high, essentially when we are feeling discouraged. For some people stock market is a wish-granting factory and for some it's a terrible nightmare. Many investors become billionaire overnight and many turned to bankrupt while investing into the market. This sector being the victim of such roller-coaster ride mandates the need for its regulations. To monitor trading in the stock market Stock Exchange Board of India (SEBI)1 has been incorporated as a "watchdog" of the share market to prevent various malicious activities.

Ketan Parekh scam (K-10 Scam) is one of the biggest stock market scams of the Indian stock market. It is believed that it is the biggest scam after the HARSHAD MEHTA SCAM. Ketan Parekh is also known as the 'pied piper' of the Indian stock market only to direct its doom, just like the story.

He was held guilty for stock manipulation and insider trading; his scam leads to downfall of the SENSEX by 176 points2 and as a result the budget of 2001 was collapsed. He used the technique of pumping and dumping i.e., he used to invest in some stocks in a huge amount to increase the demand of the stock which resulted in price appreciation and after that he used to dump as in sell those stocks in a very high price. His scam was estimated at more than 40,000 crores rupees3 by Serious Fraud Investigation Office (SFIO).

Who is ketan parekh?

Ketan Parekh or 'Bombay Bull' was a trainee of the 'Big Bull' i.e., Harshad Mehta. He is a CA by profession but started his career by inheriting his family business of stockbroking, under the name of NH Securities. With the emergence of dot com boom in the late 1990s, he started investing in the low liquidity IT and Telecom stocks, his K-10 stocks. His K-10 stocks were 1 Securities and Exchange Board of India Act,1992, section 3, No. 15, Acts of Parliament, 1992 (India) 2 Aron Almeida, Ketan Parekh Scam- The Infamous Stock Market Fraud, Trade Brains Pentamedia Graphics, HFCL, GTL, Silverline Technologies, Ranbaxy, Zee Telefilms, Global Trust Bank, DSQ Software, Aftek Infosys and SSI.

He enjoyed very close relations with many famous Bollywood celebrities, political leaders and businessmen and they connected him with Kerry Packer, an Australian Media Entrepreneur.

Both Kerry and Ketan joined hands and started a venture capital firm called as KPV venture with 250 million USD on 27 March 2000, this venture focused on investing money on startups.

How he executed the scam?

He used to select the stocks of those companies whose business was small, has low volume, has low market capitalisation but with high growth prospects. Just like his mentor he was also very bullish in nature. Due to the scam of 1992, the Bombay Stock Exchange (BSE) became very cautious and was monitoring each and every trade very closely, therefore, Ketan chose to trade in Kolkata Stock Exchange as it lacks various restrictions.

In the late 1990s the sector which was emerging the most was the information and communication sector due to the invention of the internet; this emergence was called as dot com boom. After the emergence of dot com boom, Ketan mainly focused on the technology, communication and entertainment industries. He named those stocks as 'K-10' stocks.

He used to raise funds from the promoters of the K-10 companies, institutional investors through mutual funds, hedge funds, insurance companies or from the banks for the purpose of pumping and dumping and circular trading. He used the technique of pumping and dumping for this he acquired 20-40 percent of the shareholdings of the K-10 companies to artificially inflate the prices of the stocks which resulted in overvaluation of those stocks and it attracted institutional investors or investors with a huge amount of purse to invest in those overvalued stocks and then he used to dump those shares, causing the share prices to fall significantly. He used to inflate the stock prices by trading of stocks between his entity and his friendly entities in a manner known as circular trading, wherein he along with his team executed similar sell orders in same price in same number in same time which increased the share trading volume and this acted as a bait to attract high potential investors to invest in those stocks.

For the purpose of pumping and dumping and circular trading he acquired loan from various banks including Madhavpura Mercantile Cooperative Bank (MMCB). MMCB granted him a loan without receiving sufficient securities. At that time RBI traders to acquire loan of an amount not exceeding of rupees 15 crores. In March 2001, MMCB issued pay order of an amount of rupees 137 crores to Ketan's 3 companies, Classical Shares & Stockbroking- 65 crores rupees: Panther Investrade- 20 crores rupees: Panther Fincap- 52 crores rupees. Later MMCB discounted these pay orders from Bank of India as all these companies had an account in the Bank of India. As these pay orders were lacking sufficient securities, the discounted pay orders got dishonoured and therefore, RBI intervened in between and returned those dishonoured pay orders. MMCB was unable to clear those defaults and therefore, it was declared as a defaulter and Bank of India suffered losses of 137 crores rupees4. Ketan Parekh repaid only 7 crores rupees, a case of fraud for 130 crores rupees was filed against him and his entire scam was exposed when he got detained by the Central Bureau of Investigation.

Allegations and conviction

Seeing excessive index movements in February, March and April 2001 SEBI realized that it is slightly fishy and hence it conducted an investigation., the SEBI got to know that all the stockbroking entities owned by Ketan Parekh were indulged in various unfair practices;

1. Synchronised trades

2. Circular trading for a fake price appreciation

3. Manipulative buying and selling

4. Pumping and dumping

5. Insider trading

6. Misrepresentation of facts to borrow money from bank While considering the above allegations the SEBI filed a case against Ketan Parekh and his associates. In the case of SEBI v Ketan Parekh and Others (2003)5, SEBI debarred Ketan Parekh and his companions or associates from trading in the stock market for 14 years under section 11 and section 11B read along Rule 11 of SEBI(Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 which states that the SEBI may order in the interest of investors to issue investigations or enquiry or after completion of such investigations or enquiry suspend the trading of the security if being conducted in a fraudulent manner, restrain any person to access the securities market, suspend any officer of the stock exchange, retain the proceedings of such fraudulent trade practices, direct any person 4 Tarini Kalra, Ketan Parekh Scam, iPleaders related to such transactions to dispose of any assets forming part of such fraudulent transaction, restrain any person to trade in security market in a particular manner, prohibit any person to alienate any securities acquired from such fraudulent transaction, any other order as the SEBI may deems fit6: and Regulation 11 of SEBI(Prohibition of Insider Trading) Regulations, 1992 which gives SEBI the power to initiate criminal prosecution under section 24 of the Act, in the interest of investors or securities market and for the compliance of the provisions of the Act, and the SEBI may issue an order for directing an insider or any other person to not deal in securities in a particular way, prohibiting any insider or any other person from alienating any securities acquired from violating these regulations, restricting any insider to communicate the information, declaring the transactions in securities null and void, directing the person who acquired securities from violating these regulations to reverse the transaction, directing the person to transfer the proceeds of such transactions to Investors Education Protection Fund

7. A petition was filed by Ketan Parekh against the order of SEBI in SAT in the year 2006, which debarred him and his associates from accessing in the stock market. However, SAT dismissed this petition upon considering the gravity of the scam. Another case has been filed by SEBI against Ketan Parekh and his stockbroking entities in the Special Court (judicature at Bombay), established under the Securities and Exchange Board of India Act, 1992.

In the case of SEBI v Panther Fincap and Management Service Limited and Others (2018)8, the Special Court ordered that Ketan Parekh was found guilty of an offence under section 24(2) of Securities and Exchange Board of India Act, 1992, which states the punishment for noncompliance with the directions of SEBI and accordingly he was punished with a rigorous imprisonment of 3 years along with a fine of rupees 5,00,000 also he was directed to compensate an amount of rupees 3,25,000 to the SEBI.

Conclusion

Ketan Parekh scam was the second largest fraud in the history of Indian Stock Market, the estimated amount of fraud is rupees 40,000 crores. Just like the Scam of 1992, Indian economy suffered huge losses, stock fell terribly there was a bloodbath in the Indian stock market, many people

committed suicide after losing their savings of lifetime in the stock market crash, 6 SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003, section 11, 2003 (India) 7 SEBI (Prohibition of Insider Trading) Regulations, 1992, 1992 (India) 8 SEBI vs Panther Fincap and Management Service Limited and Others, on 27 February, 2018 financial institutions got hit very hard, value of Rupee saw a downgrade against the value of Dollar, investors' trust was shattered after seeing the implications of the fraud. In order to regain the investors' trust SEBI incorporated additions in the Clause 49 in the provisions of the Listing Agreement, the new additions were related to the provisions of independent directors, audit committee, financial disclosures, related party transactions proceeds from public issue and whistle blower policy. This was done to make sure that the companies behave in the interest of the market. The RBI, to stop these frauds or scams, established a new body called as Central Fraud Registry Portal, with the aim to assist the banks to deter frauds in initial stages, this new portal is accessible by all the banks of the country.

Simran Hirwani

What Went Wrong for the Shadow Banker?

Reflecting on one of the major crises that have played havoc in the lives of investors, this event can be considered as a trigger for how the markets are behaving in the current scenario, whereby investors have lost a lot of their wealth.

By now you must have guessed that I'm talking about the IL&FS saga.

What is IL&FS?

IL&FS Ltd, i.e. Infrastructure Leasing & Finance Services, is a core investment company and serves as the holding company of the IL&FS Group. IL&FS was incorporated in 1987. In operation from the last three decades, IL&FS is a non-banking financial company that provides similar services to that of a traditional commercial bank. Also, IL&FS is not a deposit-taking company, therefore, it is not stringently regulated as other banks.

Its initial promoters were Central Bank of India (CBI), Housing Development Finance Corporation Limited (HDFC) and Unit Trust of India (UTI). IL&FS fell short of cash and kept on defaulting on several of its obligations. Even as new infrastructure projects dried up, IL&FS's running construction projects faced cost overruns.

Major shareholding:

Insurance Corporation of India	25.34%
ORIX Corporation of Japan	23.54%
Abu Dhabi Investment Authority	12.56%
HDFC	9.02%
Central Bank of India	7.67%
State Bank of India	6.42%

The IL&FS Downgrade:

Infrastructure Leasing and Financial Services (IL&FS) bonds and long-term loans were downgraded to junk status by rating agency ICRA at the beginning of September,2018. It all started when IL&FS Ltd moved up its hand and started defaulting the loans which it had taken from the financial institutions and the investors. They started defaulting all bonds repayment, loans repayment, and investors deposits. It also failed to meet the commercial paper redemption obligations and had a total consolidated debt of Rs.99,354 crores. It has already defaulted on around Rs.450 crores worth of inter corporate deposits to Small Industries Development Bank of India(SIDBI). As per estimates, IL&FS's default outstanding debentures and commercial papers account for roughly 1% – 2% of India's domestic corporate debt market.

This started pining the eyes of the rating agencies. Consequent to these defaults, ICRA downgraded the ratings of its short-term and long-term borrowing programs.

ICRA downgraded the company's Rs.4,800 non-convertible debentures from AA+ to BB as a consequence of the continuous default. The BB rating suggested clearly that IL&FS debt was considered to have a

moderate risk of default when it comes to timely serving of interest and principal repayment. Given the high level of debt, IL&FS would find it extremely difficult to meet its financial obligations (currently, IL&FS has been able to pay only 20% of the Rs. 250 crores worth of term deposits to SIDBI, which is just a part of the loan) and therefore it is in utmost need of funds.

Therefore, this event has the potential to dent India's credit market.

Banks (mostly public sector banks) and mutual fund houses have high exposure to IL&FS and therefore these institutions have also suffered heavy capital loss.

Banks such as Punjab National Bank, Bank of Baroda, Union Bank and mutual fund houses such as LIC Mutual Fund, Motilal Mutual Fund, Tata Mutual Fund, and ICICI Prudential Mutual Fund have been hit because of the IL&FS saga.

The main reason why the company is in a dire state because it has piled up too much debt in the short term, while revenue from its asset has been skewed to be generated in the longer term.

Other main reasons:

• Interest rates have lately soared to multi-year highs for the short-term, thereby making borrowings dearer for IL&FS;

• The complication involved in land acquisition and the 2013 law of land acquisition made many of its projects unviable;

• In order to leverage the opportunity in the infrastructure space, the company was very aggressive. However, in this quest its debt to equity ratio shot up to 18.7:1;

• Among other concerns for investors, IL&FS has made loans to its own units which again is a sign of danger as IL&FS cannot anticipate (at least as of now) for repayment of these loans;

• Adding to the woe, Mr Ravi Parthasarathy, at the helm of the IL&FS group, has also stepped down for health reasons in July 2018.

Investigation in the IL&FS case:

Serious Fraud Investigation Office started a probe as there were huge procedural lapses at the NBFC. On April 2, 2019, former vice-chairman of IL&FS, Hari Sankaran was arrested by SFIO in Mumbai for granting loans to entities that were not creditworthy and thereby causing loss to the company and its creditors. The initial SFIO probe also revealed that there were major lapses in Deloitte's audit of the IL&FS. SFIO investigation found it guilty of painting a rosy picture of IFIN despite being aware of the poor financial health of the company, triggering the ministry to seek a ban on the auditors. The SFIO had later unearthed multiple counts of fraud and criminal This started pining the eyes of the rating agencies. Consequent to these defaults, ICRA downgraded the ratings of its short-term and long-term borrowing programs.
conspiracy, after investigation. There were instances of misreporting, dubious transactions, conflict of interest and evergreening of loans.

The SFIO highlighted fraud in the IL&FS case, which were based on the following criteria:

• Round tripping of loans: an amount of Rs.2270 crores were involved in the round tripping of loans, where IL&FS lent money to certain companies, and then those companies round tripped those money back to IL&FS Transportation or other IL&FS group companies and this was to show, that IL&FS Transportation was doing good.

• Tenure mismatch: this amounted to a fraud of Rs.541 crores. When a lending organization gives a short- term loan, it should ensure that money is being used in a shortterm project. A huge amount of Rs.541 crores was borrowed for short term purposes, but was utilized for long term needs by 8 entities amongst which was SKIL Infrastructure which was headed by close friend of Mr. Ravi Parthsarathy and other four Board of Directors.

• Lending at a loss: Many instances showed that IL&FS lent money while at loss. A huge amount of Rs.2400 crores was involved in this. Normally the companies lend money at 7-8%, but in a few cases the spread was negative or as low as 2-3%. And here the question arises that why would any company lend at loss? Maybe there was compulsion from political connections or there could be other compulsions.

• Loan to Defaulter: There were 16 cases involving Rs.1992 crores, where the management approved loans to companies who had red flags marked by the organization, for instance the SIVA group.

• No charge against Collateral: Normally a charge is created on some or the other property of the borrower so that the money of the lender is secured but here there was none. The management did not bother to check that the collateral security offered by the parties are adequate enough to cover the loans or not, rather they just lent money. Companies to name were GVK Hotels, Bharat Roads and SR shipping .

• Evergreening of defaulting accounts: This action pointed to a fraud where Rs.145 crores was involved where new loans were given and taken back the same day.

• Funding of Promoters and Directors: A total of 6 cases amounting to Rs.94 crores, the IL&FS was giving loans to certain companies and a big chunk of this amount went straight to one of the Directors of the IL&FS group companies. It is a clear case of conflict of interest.

On August 16, 2019, the Enforcement Directorate (ED) filed its first charge sheet in the so-called IL&FS money laundering case.

The prosecution complaint was filed in a special court of the Prevention of Money Laundering Act (PMLA), charging former senior management personnel of IL&FS — Ravi Parthasarathy, Ramesh Bawa, Hari Sankaran, Arun Saha, and Ramchand Karunakaran — along with Aircel founder C Sivasankaran.

The ED also made provisional attachment of bank accounts and immovable property to the tune of Rs 570 crore held by these people. The charge sheet pointed out that the senior management had falsified the accounts and indulged in circuitous transactions. This was done ostensibly to maintain the credentials of IFIN, in order to continue receiving high remuneration and to artificially boost the balance sheet of IL&FS group. However, these activities led to further losses.

The role of the auditors and fraud aspects:

IL&FS escaped through scrutiny since it positioned itself as a government organization, and was the favourite partner of the state and central government projects. Since all companies have a statutory auditor which is governed by The Institute of Chartered Accountants of India, they are supposed to certify that the reports are true.

The auditor for the IL&FS group was Deloitte Haskins & Sells LLP, which was at job from 10 years.

Deloitte never found any fraudulent activity in the company. The annual reports stated that there were no adverse comments by the auditors for 10 years.

The auditors of the company landed in trouble for not identifying its problems. The Ministry of Corporate Affairs wanted to ban the auditors for 5 years for their involvement in the scam.

What is the road ahead?

In the absence of a quick strategy by the regulator and the government, this crisis would translate into a solvency issue leading to a domestic credit crisis inflicting wounds on banks, mutual funds houses and other financial institutions.

Also, what's worse is that most of the group's assets include financial claims on infrastructure projects such as roads, tunnels, water treatment plants, power stations, etc which cannot be liquidated to escape the mess.

The company has identified nearly 25 projects which will be up for sale. By selling these assets, it intends to bring down its debt by approximately Rs.30,000 crores which is one-third of its total debt but the whole process can take over a year.

Taking charge of the situation, the government has moved the National Company Law Tribunal (NCLT) to supersede the IL&FS board and change the company management.

Many powerful players have a deep interest in preventing the group's collapse including blue chip companies and sovereign-backed shareholders.

It is interesting to note here that the parent company is categorized by the Reserve Bank of India as a 'systematically important institution' Therefore, the government has taken active steps to curb further downfall and restore sanity.

Sneha Singh

Can Asia's Richest Man Tremble The Freedom Of Indian Press?

In this era of growing economies, corporate restructuring has turned out as one of the best means by which a company can increase productivity, improve quality of products, reduce costs and boost overall efficiency of operations. One of the most common strategies of inorganic corporate restructuring is "Takeovers" governed under SEBI (Substantial Acquisition of Shares and Takeover) Regulations,2011.A lot of takeover deals took place this year such as AIR INDIA/TATA, ELON MUSK/TWITTER, ZOMATO/BLINKIT, but why is fear of independent press/journalism rooting in the ambience of journalists, politicians, media houses, lawyers and interested people at large in a similar so called "hostile" takeover deal of ADANI/ NDTVMany people proclaimed that Adani group has illegally acquired NDTV to use it for their own interests rather letting it run by independent journalism through presentation of true facts. Moreover, allegations have been raised against the acquirer that it will use NDTV to benefit Mr. Adani's "close friends" (make NDTV a Bjp led media platform). Let's take a quick insight of the deal;

Important dates and facts of the deal:

2007: Prannoy and Radhika Roy (owners of NDTV) decided to buy back shares of NDTV from GA Global Investments (7.73% holding in NDTV) at Rs. 439 per share (issue price = Rs.400).

2008: To finance buy back consideration, Roys took loan of Rs.501 Crores from India Bulls Financial Service Ltd.

LOAN FROM ICICI BANK: To return the loan of India Bulls, Roys further borrowed Rs. 375 Crores from ICICI.

LOAN FROM VCPL: Again, to meet the loan repayment, they further took loan of 403.85 Crores from VCPL by transferring 99.5% of equity warrants of RRPR HOLDING PRIVATE LIMITED (joint holding of Roys) which specified that VCPL can anytime exercise the equity warrants and take full control over RRPR. Roys secreted this deal from investors which is against SEBI laws, CBI and SEBI inquiries were ordered.

23 AUGUST,2022: Adani owned AMG Media Networks Ltd. acquired VCPL i.e., Adani indirectly acquired 29.18 % stake in NDTV and launched open offer as per takeover code.

TRIGGERING OF OPEN OFFER: AMG Media

Network, after conversion of warrants declared that the transaction has resulted in an indirect acquisition of over 25% in NDTV and thus trigerring an open offer worth 493 crores to acqire 26% of NDTV so that Adani has 55% interest in NDTV.

This is how the most disputed "hostile" takeover deal of 2022 took place.

Media plays a predominant role in shaping one's thoughts in our country.

A single deal cannot curb/limit it's independent functioning.Media is considered as fourth pillar of our constitution after legislative,executive and judiciary.It acts as an medium between government and people of India.Article 19(1)(a) of Constitution lays down Freedom Of Speech which covers freedom of press.Freedom of press refers to ,no interference by state or power exercising authority to stymie the operations of press.It is the freedom to express opinions,true facts and data without any prior permission of law.Objective of press is to communicate facts and opinions in virtual or print media in public interest to enable citizens in making rational judgements."Freedom of press is essential for the proper functioning of the democracy".

Business of companies: Companies indulge in mergers and amalgamations for majority of reasons.Adani-NDTV deal is also done to fulfill all those reasons.One of the biggest greed of merger deal is expansion and growth.Media ,a massive trove of data is of immense help to companies in order to retain and grow their audiences.Companies identify and analyze user data to provide personalized contents and reccomendations.Many at times companies take part in mergers to simplify their corporate structure.In today's time of diversification,all business houses are in search to exploit the opportunity to expand portfolio/area of operations(Adani group's goal- to cover international media coverage through NDTV platform).Modern corporate culture is all about going hand in hand with new technological advancements and corporate norms followed by rivals.Adani group acquired NDTV to meet competitive forces in the market(Reliance -Network 18).Big businesses enter into news and media industry not just to earn profits, but also to use it as negotiation power while dealing with different governments. Adani-NDTV deal is just a corporate deal run down in avarice of all these reasons.

Media is not controlled by state/ no room for biasness: Media is not controlled by state/law in our country.It's not like that of china where citizens only receive those facts/data or news which the government wants them to know.Media is like any other sector being governed by the laws of free market economies.i"freedom of expression and of the press are the cornerstone of all democratic organisations". Futhermore in this era of hyper globalisation,it is very difficult to get away from critical public lens.Biased media or presenting misleading information is restricted by our constitution under certain ammendments. In order to protect moral and fundamental rights of residents,government has undertaken many measures to prevent circulation of fake/biased news.If Adani group broadcasted news on NDTV that would be of their interests they might end up loosing viewers as NDTV is known for being a vocal critic of ruling

29.18% 28.18% 16.32% 15.94% 9.75%
HOLDING RRPR PUBLIC RADHIKA PRANNOY LTS3

government and audience easily shift to other channels if the content is not fetching their mind properly. ii "According to a study conducted by the Reuters Institute for the Study of Journalism ,75% of Bhartiya Janata Party supporters and 81%

of all other political supporters trust NDTV as a source of news and information". Adani group will never attempt any blunder which will result in loss of it's customers.NDTV said in a release, "Since the open offer was launched ,our discussions with Mr. Gautam Adani have been constructive; all the suggestions we made were accepted by him positively and with openness".This entails that this "hostile takeover" is completely within the realms of financial laws of the land.

Single deal cannot weaken the pillars of indian democracy: In a democracy ,it is preached that the right to free expression is not only the right promised to a citizen rather it's the right promised to community at largeOur Constitution is laid on the principles of secularism, sovereignty, judicial independence and liberty. Key emphasis have been given to freedom and fairness in our constitution as it is stated "innocent until proven guilty". Freedom of Indian media, fourth pillar of our constitution is not that narrow that it can be curbed or restrained by single corporate deal.iiiDoctrine of Sepration of Powers propounded by Montesquieu tells us that ,no organ of political system,be it Legislative,Executive,Judiciary or Media can become too powerful or too weak in a democracy,because there is a continuous mechanism of checks and balances by each on every other. Moreover, there are regulators of media and entertainment sector, Cable Networks Act,1995 and Prasar Bharti Act,1990 regulated by Ministry Of Information and Broadcasting which keep check on media, improve standard of press in India and preserve freedom of press.

NDTV continues to cover anti-government news: NDTV continues to publish and broadcast critical/anti BJP news after its acquisition deal with Adani's AMG Media Network dated 30th August,2022. Let's have a look on some of the Anti-Bjp news covered by NDTV recently;

Government Asked To Submit Special Probe Report On Gujrat Bridge By Jan19: Gujrat High Court directed the state government to submit progress report of Special Investigation Team's (SIT) investigation in the Morbi Mishap, where a century-old suspension bridge collapsed,claiming lives of 134 people.

2022 Not Wonderful But "Dreadful" Year For India's Economy: Congress: Congress national Spokesperson Gourav Vallabh cited several instances in support of his claim and said that the government has completely failed on the economic front during the year.

Under BJP Government, Cases Against Political Rivals Explode: NDTV Analysis:Under UPA-2, Central agencies took action against 27 Congress members or party allies.For every action against one of their own ,the UPA-2 government acted against 3 of its rivals,while the Bjp government took action against around 15.

It is evident enough that, NDTV has not gone through enough changes apart from it's holding pattern after the acquisition deal as it continues to perform it's function of bringing out the true and hidden news/facts of the ruling party.

In conclusion, the Media in our country cannot be controlled by state and not even by the law(subject to reasonable restrictions),then how can a business house boss it around.Indian press and journalism has always acted as the barrier between citizens and government to bring out all the necessary and eminent informations.In addition to acquisition of NDTV Adani's AMG Media Network also has stake in BQ Prime(Quint). Mr. Adani has said that his entry in media industry is a "responsibility" and not just a business oportunity. Social media also plays a key

role in engendering a neutral media for the society.Even if we concede that one player in the media might become partisan after the deal, there are many others which adhere to the democratic ethos of our country and hence, the fourth pillar is sure to not become lopsided.There are tons of intellectuals out there who are going to dissect the deal and bring the facts out in public.

Somya Rai

Position of Personal Guarantor under IBC

Insolvency And Bankruptcy Code, 2016 was enacted to consolidate and ament law related to reorganization and insolvency resolution of corporate person, partnership firm and individual in a time bound manner in India for maximization of value of asset of such person, to promote entrepreneurship, to increase availability of credit and to establish an insolvency and bankruptcy board of India as a regulatory body.

Personal guarantor

Section 5(22) of IBC, 2016 defines "personal guarantor" means an individual who is surety in a contract of guarantee to a corporate debtor.

"Contract of guarantee" is a contract to perform the promise or discharge the liability of third person in case of default. The person who gives guarantee is called as 'surety' the person in respect of whose default guarantee is given is called as 'principal debtor'.

How to start CIRP

Under section 7(1), 9,(2) 10(4) of IBC, 2016 on the event of section 3(12)of IBC,(4) default financial creditor, operation creditor, corporate applicant(5) can make application to National company law tribunal (NCLT) has jurisdiction of state in which registered office of corporate debtor is located for initiation of corporate insolvency resolution process (CIRP). NCLT after reviewing the default may accept the application. Once the application is accepted moratorium starts.

Section 14 of IBC, 2016 provides for moratorium period it is to ensure that the financial status quo of the corporate debtor during CIRP. It prohibited institution of suit or proceedings against the corporate debtor including execution of any judgement, decree, or order in any court of law, transferring ,encumbering ,alienating or disposal of by corporate debtor of any of its assets or any legal right or beneficial interest therein, any action to foreclose ,recover of any security under SARFASI Act,2002 , recovery of any property by owner or lessor where such property is occupied by or in possession of corporate debtor and entering in any material contract.

Liability of Personal Guarantor

Now the question is whether sec 14 of IBC, 2016 will also applicable on personal guarantor as well?

In the case of State Bank of India VS V. Ramakrishna an application was filled corporate applicant under section 10 of the code for initiation of voluntary CIRP the application was accepted by the tribunal and section 14 of the code was imposed .During the pendency of CIRP an application was filed by Mr. V. Ramakrishna, wherein he questioned that the provision of section 14 would also applicable to personal guarantor as well .NCLT allowed the application and held that moratorium period is not applicable to personal debtor.

SBI make an appeal to National Company Law Appellate (NCLAT) against the order passed by NCLT. NCLAT held that moratorium period under section 14 would also applicable to corporate debtor.

The judgement of NCLAT is challenged by SBI before Hon'ble Supreme Court even the appeal filed by SBI an amendment was introduce in Insolvency And Bankruptcy Code, Section 14(3)(6) of the code was substituted to read that provision of section 14 would not apply to personal guarantor of the corporate debtor. Supreme Court held the same that section 14 of this code is not applicable to corporate debtor of corporate debtor.

As per section 126 of Indian Contract Act, 1872 a contract of guarantee is made among the debtor, creditor and the guarantor. If the debtor fails to repay the debt to the creditor, burden falls on the guarantor to pay the amount. Once the personal guarantor repays the debt to the creditor section 140 of Indian Contract Act, 1872 puts the guarantor in the shoes of creditor, allowing it to recover the amount paid on behalf of the principal debtor, wherein the UK Supreme court pass a statement that the principal debtor has a primary obligation toward the creditor and also a secondary obligation to indemnify the guarantor. Similarly, the guarantor has an obligation to the creditor to pay on behalf of the principal debtor but has only a secondary right to recover from principal debtor. The Supreme Court in Lalit Kumar Jain v. Union Bank of India left the argument at a vague note by quoting UK Supreme count's observation that if the principal debtor is already insolvent then the guarantor may not enforce its secondary right.

If the personal debtor fails to repay the debt of corporate debtor, the creditor reserves the right to begin insolvency proceeding against the personal guarantor. As part III of the code which deal with the framework and resolution of individual and partnership firms have not been notified yet the code did not recognize personal guarantor as separate class of individual. But after the enactment of insolvency and bankruptcy (Amendment) Act, 2018 , that personal guarantor were recognize as separate class of individual and also empower National Company Law Tribunal to act as adjudicating authority for insolvency proceeding for personal guarantor. Pronouncement of Supreme Court in Mahendra Kumar Jajodia v. State Bank Of India provides clarity on the right of creditor to initiate insolvency resolution process against personal guarantor of principal debtor.

The insolvency resolution process can be initiated against personal guarantor under part III of the code by filling application under section 94(7), 95(8) of the code debtor who commits default, creditor by submitting an application to NCLT. An interim moratorium shall commence as soon as the application has filed under section 94 or section 95 of IBC, 2016 ,the interim moratorium ceases to operate only after a resolution professional is appointed and files it report adjudicating authority has power to admit the application under section 94 or section 95 and the moratorium under section 101 during the period of moratorium a) any pending legal

action or proceeding in respect of any debt shall be deemed to have been stayed ; b)the creditor shall not initiate any legal action or legal proceeding in respect of any debt ;c) the debtor shall not transfer or alienate any property or any legal right or beneficial rights, the moratorium shall cease to have effect at the end of one hundred and eighty days from the date of admission of application or on the date when adjudicating authority passes an order on repayment plan whichever is earlier.

Conclusion

The insolvency and bankruptcy code, 2016 was enacted to consolidate and ament the law relating to reorganizing and insolvency resolution of corporate person, partnership firm and individual in a time bound manner. To balance all stakeholder's interest. To maximise the value of assets of the corporate debtor. To increase the availability of credit which promote ease of doing business in India. India's rank moved up from 136 to 52 in term of 'resolving insolvency' from the above we can summarizing the position of personal guarantor under IBC, 2016

Suyash Kabra

Rajat Gupta – Insider Trading Scam (The Rise and Fall of Indian Diaspora)

Rajat Gupta

Rajat Kumar Gupta (born on 2nd December 1948) is an Indian American Businessman. From being born in Kolkata to reaching the terrific height of the highly Competitive Corporate World in America, the story of Rajat Gupta is nothing short of Legendary. He Has Achieved Many Things in his Life that No One Could Have Done in their Life.

A US Court Held Rajat Gupta former Director of Goldman Sachs Guilty of Providing Secret Information to Hedge Fund Founder and His Friend Raj Rajaratnam, for which he was sentenced to Two Years in prison and a fine of $5 million. From being the Managing Director of McKinsey who fulfilled the American Dream, and the rise of the Indian diaspora, Rajat Gupta became a prisoner for almost two years.

"Rajat Gupta once stood at the apex of the international business community. Today, he stands convicted of securities fraud. He achieved remarkable success and stature, but he threw it all away," said Indian-origin chief Manhattan prosecutor Preet Bharara said in a statement.

"Insider Trading" – As Per SEBI (Insider Trading) Regulation, 1992 Insider trading is defined as using Unpublished Price Sensitive Information to deal in securities of the company for one's benefit.

Early Life, Education, and Carrier Rajat Gupta was born in Calcutta, India. His Father Ashwini Gupta was a Journalist for Ananda Publisher his mother named Pran Kumari taught at a Montessori school.

He was a student at Modern School in New Delhi. He received a Bachelor of Technology degree in Mechanical Engineering from IIT Delhi in 1971. He received a job offer from the prestigious domestic firm ITC Limited which he rejected and he applied to Harvard Business School. His Economic professor at IIT Delhi wrote a recommendation letter when he applied for Harvard business school. In 1973, he received an MBA from Harvard Business School.

Rajat Gupta joined McKinsey & Company in 1973 as one of the earliest Indian Americas at the Consultancy. He became the head of McKinsey Offices in 1981 and this was the first time where he proved himself and made his mark. He was then elected as a

senior officer in 1984.

In 1994, he was elected as the Managing Director and was re-elected twice in the years 1997 and 2000. He is widely regarded as one of the first Indian- born CEO. During His time, the firm opened offices in 23 new countries and increased its consultancy base to 891 new clients, increasing revenue by 280% to $3.4 billion. His annual salary at that time was estimated at $5-10 million USD.

In 1997, Mr. Gupta founded the Indian School of business with his friends and fellow partners. He became a member of the board of Procter & Gamble from 2007 till March 2011 and also became a member of the board of Investment Bank Goldman Sachs in 2006 and his term got expired in 2010. Gupta has served as a director in various financial groups and had a vast experience in the financial market.

Insider Trading Conviction

Rajat Gupta was Convicted of sharing Confidential information on Goldman Sachs with Hedge Fund Manager Raj Rajaratnam. This was around 2008 when Mr. Warren Buffet agreed to invest in Goldman Sachs. After the board discussion on investment, Rajat Gupta was charged for calling Raj 16 seconds later and disclosing the Buffet News.

In September 2008, during the time of financial crisis, Warren Buffet agreed to invest $5 billion in exchange for a preferred share of the company. This News is likely to raise the share price of the company and hence was called Unpublished Price Sensitive Information. The news is not supposed to be made public until the end of the day. In less than one minute after the Board approval, Rajat Gupta called his companion Raj Rajaratnam, Hedge Fund Manager and Founder of Galleon Group. After receiving the news, Rajaratnam immediately buys a share of Goldman Sachs. Mr. Rajaratnam made a profit of $800,000 in just 24 hours.

Raj Rajaratnam was found guilty of five conspiracy cases and nine security fraud cases and was sentenced to 11 years of imprisonment. This was the longest sentence ever in an insider trading case.

Rajat Gupta's jury trial began on the 22nd of May, 2012. He was founded guilty of three cases of security fraud and one count of conspiracy and was acquitted on two cases of security fraud. But there was no hard evidence against Rajat Gupta except the tape of a conversation between Rajat Gupta and Raj Rajaratnam where Gupta summarises the discussion held in the board meeting. But this tape did not lead to any trade made nor did the tape clear that it leaked confidential information and it became very difficult for the government to get any hard evidence and proved this security fraud.

Managing Partner of Westwood Capital, LLC Daniel Alpert calls this a "very disappointing episode because Rajat Gupta was an extremely senior guy and was living the life of jealousy of the enormous returns that were being made by the people who did not quite have his CV but were making enormous profits"

Prosecution Charges

- On March 12, 2007, Rajat Gupta participated in the Audit Committee of Goldman Sachs about the company's quarterly earnings which are to be announced the next day (13th march, 2007) through the telephone from the premises of Rajaratnam New York Galleon Group. Galleon Fund bought 350,000 shares of Goldman Sachs after the call ended.

- On September 23, 2008, Rajat Gupta participated in the special meeting of

Goldman Sachs where Warren Buffet's Berkshire Hathaway $5 Billion Investment was approved. After the conclusion of the meeting, Gupta called Rajaratnam at his New York Office. At 3.58 pm, Galleon Funds bought 2,17,000 shares of Goldman Sachs.

On October 23, 2008, Gupta participated in a Goldman Sachs Board meeting where it was discussed that company was losing $2 per share. Twenty-three seconds after the call ended, Gupta called Rajaratnam who sold his entire holding on 24th of October, 2008.

On January 29, 2009, Rajat Gupta participated in the Audit Committee of the P&G board where quarterly earnings were discussed. At 1.18 p.m., Gupta called Rajaratnam who sold 1,80,000 shares of P&G stock.

Rajat Gupta's Arguments on charges framed against him i. There is no evidence that Rajaratnam traded on the insider information given by Rajat Gupta in the taped conversation between them.

ii. Rajat Gupta and Raj Rajaratnam were not on good terms following the loss of a $10 million investment by Gupta in Galleon Funds.

iii. Mr. Gupta has a justifiable reason to call Rajaratnam as they both were the co-founder of the private equity firm "New Silk Route" which was set up in 2006.

iv. There are no shreds of evidence of Rajat Gupta receiving any kind of Monetary Benefits or any such benefits from the profit made by Rajaratnam based on the information

v. The Government also knows that Rajaratnam had other sources in Goldman Sachs.

Rajat Gupta Trial Day 1

The start of the Rajat Gupta Trial was accompanied by rain pouring the New York Street.

The US Government Lawyer, Reed Brodsky describes how Rajat call Rajaratnam after knowing the confidential information and argued that Call records between the two and subsequent trade are quite evidently connected.

This call led to Raj Rajaratnam buying a share of Goldman Sachs just 2 minutes before the market closed and it yielded more than $800,000 profit.

Brodsky continued that Gupta, an IIT-Delhi and Harvard Business School graduate, appeared "sophisticated and highly accomplished" but he also "threw away his duties" by disclosing corporate secrets when the investment bank was going through a rough time.

Gary Naftalis, Rajat Gupta's Lawyer argued that it doesn't make sense for Gupta to cheat in this type of scheme that ended with no profit for him. He is a Reputed Business global icon and the prosecution evidence is based upon circumstantial evidence. Naftalis Argued that there is no hard evidence to prove this fraud and the prosecution's case is based on Speculation and Suspension.

Naftalis also mention the charitable work done by Gupta but the Judge didn't see it as relevant to the case.

Further Trial

The Prosecution's challenge was to prove the jury that Gupta leaked the insider information. On 2nd day of the trial, the prosecution called as a witness Ananth Muniyappa who was the junior trader at Galleon Group. He testified that the order was received to buy 100,000 shares of Goldman Sachs that day. The Government

also presented evidence that the shares of Goldman Sachs were purchased that day. This day's trial didn't convince the jury that Rajat Gupta made a call to Rajaratnam that day.

On Day 3rd of Trail, the US Government presented a phone call record between Gupta & Rajaratnam and also called a special agent Thomas Zukauskas from the FBI, who testified about recognizing Gupta's voice on the tape but it does not have a record of the actual conversation On day 5th, US Government now tries to establish that Galleon Funds sold P&G shares back in 2009 based upon the information shared by Rajat Gupta on the bad quarter. The Prosecution called witness Michael Cardillo who confirmed that P&G Stock was sold with the order of Rajaratnam.

On day 7th, the Prosecution brings out a swipe card record which showed that the card was swiped to enter Galleon Group's trading room. In defence of this, Rajat Gupta's lawyer said that they do not have proof that the swipe card was used only by Rajat Gupta. The Prosecution is bringing up every kind of evidence- phone records, tape records, and swipe card record just to convince the jury that the Rajaratnam trade was not a coincidence and was linked with Rajat Gupta.

Rajat Gupta was found guilty of one count of conspiracy and three of security fraud and was sentenced to two years of imprisonment. The judge said in his ruling that even though Gupta is a man of laudable qualities, the hard fact remains that he had committed a serious crime. Also, the US District Court judge said that he wanted to ensure that the people should understand that when they will commit this type of crime, they will go to jail.

Rajat Gupta filed an appeal to overturn his insider trading conviction. Gupta believed that there was insufficient evidence at the trial of him receiving any personal benefits in exchange for the information to which the court denied the appeal as the court finds it without any merit.

After Release Life

Gupta's Biography, Mind Without Fear, was published in March 2019. In a detailed one-hour interview after the publication, he described his side of the story. He said he did not speak during his trial based on the advice of his lawyers. In his first interview after his release in 2016, Gupta maintained his innocence and said he wants to rebuild his life.

In a press release, his publisher Juggernaut Books said: "Gupta's book promises to be an extraordinary human story of a man who had it all before he lost everything." Gupta said: "My life has had many ups and downs and, in this book, I want to talk about my struggles and how I've found solace, strength... I hope the youth in particular will benefit from the learning in my journey."

Tarushi Gupta

Interplay Of Time Bound Code With Time Bind Act

Science is about knowing; law is about the interpretation of draftsman's intention. A law read by thousand different people is like thousand different laws. Therefore, it is on the intermediaries to maintain the objectives of law for accomplishment of intention of legislature for which it was enacted. Similarly, the law of limitation was passed in 1859 to consolidate and amend the statute for limitation of suits and other proceedings, as well as for purposes related thereto. Whereas the insolvency and bankruptcy code, 2016 was drafted to consolidate and amend the laws relating to reorganization and insolvency resolution of corporate person, partnership firms and individual in a time bound manner.1

Limitation act is very basic yet vital legislation because in the absence of the applicability of its principles no race can be run, as if one doesn't know where to start how one can run a race?

Therefore, limitation act serves as a foundation for when to start and when to end. Similarly, keeping foot on accurate time must be given equal weight. As Indian laws run on the principle non dormeientibus juira subveniunt - the law will assist only those who are aware of their rights and not for those who sleeps upon it. Insolvency and Bankruptcy code is a complete code which consolidated all the scattered provision relating thereto, however it is also an evolving code as it is going through various amendments, different interpretations by the adjudicating authorities and by apex court on different matters, arose on different time. The adjudicating authorities are trying to create a strong ballot in face of loop holes bullets and to deliver all the dimensions of justice.

Evolution should be reasoned, intellect and harmonized, or in other words it should be in line with already settled laws. As every law is enacted with an objective to be achieved, however chaos is law of nature, order is dream of man. Chaos arises when language fails - it is not an extremely new situation as every aspect of practicality cannot be covered.

The chaos created on the matter applicability of time bar act over time bound code or in other words applicability of limitation act over the proceedings of insolvency and bankruptcy code.

In general parlance the importance of single day might be not that crucial, however the enactment of this code changed the entire scenario wherein a

single day may change the entire Versus-URBAN-INFRASTRUCTURE-TRUSTEES-LTD-2017-08-23 (last visited Dec. 23, 2022) course of case.

In B.K. Educational private limited v/s Parag Gupta and associates (2008)2 headed by R. Natarajan, the question for the first time before the bench arose on applicability of limitation period over the proceedings of insolvency and bankruptcy code. After giving an opportunity of being heard to both the parties, Supreme court upheld that the provisions of limitation act will be applicable on insolvency and bankruptcy code.

The appellant authority, NCLAT, rendered a reversed decision in the case Neelkanth Township and Construction v/s Urban Infrastructure Trustees Ltd (2017)3 where it highlighted that there are no records to show if provisions of limitation act apply on proceedings of insolvency and bankruptcy code. This was followed by another judgement of NCLT where the Tribunal held that IBC is complete code in itself therefore no question of applicability of limitation act will apply.

To bring the unity in diversified interpretation of the law, central government promulgated, ordinance and inserted section 238A under IBC 20164. However, it does not give the holistic gateway rather brought another banging question in this relation, on the effect of this ordinance, whether the ordinance so notified will have retrospective or prospective effect? The apex court clarified the ambiguity stating that the effect of ordinance will be retrospective and not prospective.

In B.K. Educational private limited v/s Parag Gupta and associates (2008) Supreme court gave holistic vision on some other matters which are in line with the current question of law and tried to draw a synergy between both laws, as no specific period has been prescribed under IBC for the date of default, and therefore limitation act will apply and Article 137 of Limitation act will become basis for determination of date of default and commencement of limitation period. Immediately followed by another well celebrated case, Sagar Sharma and others v/s state of Nct and Anr (2021) NCLT held that any case filed after the period of three years will be barred by the period of limitation and Article62 will be applicable.

Money can't buy happiness, but not in case of creditor whose debt has become due but yet not 2 B.K. Educational Services (P) Ltd. v. Parag Gupta & Associates, (2019) 11 SCC 633. 3 Neelkanth Township and Construction Pvt. Ltd. v. Urban Infrastructure Trustees Ltd., (2017) SCC OnLine SC 1984 paid to him however keeping in view the objective of IBC is to rehabilitate the corporate debtor in time bound manner in order to ensure maximization of assets value and not to recover creditors money, because of this dissimilar views of legislature and the creditor, who has authority to take decisions relating to corporate debtor during the process of CIRP. Corporate insolvency resolution process is like spider webs, through which the big flies pass and the little ones gets caught, according to latest data released by (Insolvency and Bankruptcy Code of India) IBBI 47% of total applications filed ends up to liquidation and only 14% successfully implement resolution plan5. According to this data, IBBI distressed companies liquidated under IBC have far outnumbered then those rescued as of till march 2022, and assets after liquidation were valued at less than 8% of outstanding debt amount. However, IBC has successfully reduced the bankruptcy resolution time from 4.3 years to 460 days till March 2021which helped improving India's ease of doing business.

The above concerning data makes it more eminent to make application of provision of

limitation act in order to secure the intent of the legislature, and to protect the IBC from becoming mere recovery forum, rather being resolution forum. However, limitation act is applicable from perspective of creditor and not from perspective of corporate debtor The road of law is full of twist and turns and, looking deep will make us to understand it better and make law more worthy. Similarly, IBC is evolving law and interested parties are diving deep into provisions of IBC and applicability of limitation act on provisions of IBC. In the same context another twist took in case of V. Padma Kumar v/s Stressed Assets Stabilizations Ltd (2020) before NCLAT wherein a question was raised relating to matter of applicability of Section 19 of Limitation Act- acknowledgment of debt by debtor.6The question which needed clarification was whether entries passed by corporate person in balance sheet would amount to acknowledgement of debt? For evicting the confusion finally on March 2021, a very significant judgment was issued by apex court in well settled case of Sesh Nath Singh v/s Baidyabati Shereraphuli Company (2021)7 in which court held that law should be interpreted in liberal and purposeful manner at the end it is the spirit and not the form of law that keeps justice alive and the intent of law is never to abolish or bar justice rather it aims to enlarge the justice. In the Sesh Nath Singh case apex court endeavored to remove all the 7 Sesh Nath Singh v. Baidyabati Sheoraphuli Coop. Bank Ltd., (2021) 7 SCC 313.

hesitation or lack of certainty on the acknowledgement of debt relating issue, and held that any written acknowledgement whether by means of letter or balance sheet or through any mode which is valid in eyes of law for such a matter of concern the period of limitation stands shifted to the date on which the corporate debtor agreed to pay. However, it is to be noted that any judgment and decree passed by Debt Recovery Tribunal or any other adjudicating authority that merely suggest that debt become due and payable it does not shift forward the date.

Another decision which shed light on one more prime question relating to guarantee was refuted in Laxmi Pat Surana v/s Union Bank of India (2021)8 where it was elucidated that any guarantee which is been made is co-extensive with borrower under Section 128 of Indian Contract Act,1872. Therefore, if there is extension of time in so far as borrower is concerned, in case of guarantor also same principle will be applicable, and further enlightened that acknowledgement of debt in balance sheet or in manner will be taken into consideration for determining Section 18 of Limitation Act However, the acknowledgement should be within the scheduled period Section 138 will be pertinent for ascertaining the period of limitation period and if sufficient causes are shown to the court and court is satisfied may provide extension of time, but the power is discretionary and not mandatory. Thus, it makes applicability of Section 5 of Limitation Act in filing of application under IBC.

Ignorance of law is no excuse but, in some cases, where an appellant had moved before an authority which does not have jurisdiction to entertain the application, and the application so filed is within the period of limitation so prescribed, in such a case it cannot be understood as the claim is barred by limitation.9

The clearest way to show that the rule of law means in everyday life is to recall what are the consequences when there was no rule of law written by legislature in any Law. In such a case residuary section of law play an significant role, in Gaurav Hargovindhbhai Dave V/s Assets Reconstruction Company Ltd.(2019)10, it was upheld that the proceedings under Section 7 of IBC are an

application and not suit, thus they fall within the residuary Article 137 of limitation act and right to apply will arise from the date of default and period of3 years will be applicable 8 Laxmi Pat Surana v. Union Bank of India, 2020 SCC OnLine SC 1187.

9 Sanghvi Movers Ltd v. M/S Tech Sharp Engineers Pvt. Ltd., (2019) SCC OnLine NCLAT 1027.

10 Gaurav Hargovindbhai Dave v. Asset Reconstruction Co. (India) Ltd., (2019) 10 SCC 572.

considering the provisions of both the acts and giving them harmonized interpretation while applying one act over the other, however one act cannot be applicable as like blanket, applicability will be only to the extent they are in line with each other objectives, it will take various twist and turns typically like snake and ladder where all the moves is to reach the finish line - serving justice.

A person cannot put off the thing on tomorrow which can be done only day after tomorrow, it is always to be on scheduled time, putting target on piece of paper to be achieved by legislature does not completes the task it is on the executory to fetch the planned target, similarly to avoid the downfall of IBC and its intent to recover the corporate debtor in time bound manner, to accomplish the dream of legislature, to abate the burden on shoulders of adjudicating authorities by restricting time within which justice can be soughed, putting a limit over forged cases, saving the precious time of judiciary. Money invested by creditor isn't charity but rather a trust to have money back on the time as promised as money have time value its value drops as time passes, it makes more importance to avoid lifting up of creditors trust from company, therefore it is important to have law for the same and making applicability of limitation act over the same. This can be more effectively achieved by having more adjudicating benches, availability of alternative dispute resolution mechanism and adoption of International Standard for haircut needs to be followed in India Applicability of Section 2(j), Section 3, Section 5, Section 14, Section 18, Section 19, Article 137of Limitation Act and some other provision of limitation act which are in similar lines with the objectives of IBC, gives a gateway to tackle the grey areas of IBC, to prevent litigations from being dragged for a long time and ensures quick disposal of cases.

Varun Vaze

Consolidation of Mutual Funds

What are Mutual Funds?

Mutual funds are funds which are pooled together from different sources and invested in equities of different companies. It is a investment vehicle in which funds collected from investors is utilised for some common objective. A mutual fund is set up in a trust form which has sponsors, trustees, asset management company (AMC) and a custodian.

Mutual Funds is ideal for people who do not have large sum of funds to invest in scripts of the market. Diversification reduces the risk because all stocks does not move in the same direction in the same proportion at the same time. Mutuals funds investment in various scripts is being monitored by SEBI and every Mutual Fund has to follow the SEBI (Mutual Fund) Regulations,1996.

What is Net Asset Value (NAV)?

The performance of a scheme is denoted by the Net Asset Value. NAV is the market value of securities held by it. As the market value of securities change everyday thus the value of NAV also varies every day. The Net Asset Value of a unit is the Market value of mutual fund securities minus liabilities divided by the total number of shares/units outstanding. The NAV is said to be "adjusted" when there is a dividend involved. NAV helps to determine the mutual fund's valuation and pricing in the market. Mutuals funds distribute the earnings in the form of dividend to the unit holders and thus the NAV decreases by time.

What are Asset Management Company?

Asset Management Company is a company that invest the funds collected from its clients into various scripts according to the financial objectives. These are in the form of Trusts and registered with SEBI. According to stats, there are 44 AMCs in India and total Asset Under Management (AUM) is approximately 40,49,450 Crores.

How does Mutual Funds work in India?

Indian mutual funds may invest in bonds and other debt securities with the goal of generating regular interest income. Indian debt funds invest in government or corporate debt instruments and money market securities just like American funds.

There are Indian balanced funds that invest in both equity and debt instruments to create portfolios that offer a degree. Mutual funds in India are regulated by the SEBI. Indian mutual funds are subject to stringent requirements about who is eligible to start a fund, how the fund is

managed and administrated and how much capital a fund must have of stability without completely ignoring the potential for big gains in the stock market.

However, in recent times, there have been mergers taking place of mutual funds. It is because SEBI has issued new guidelines which restrict the mutual funds from having overlapping, similar schemes which causes perplexity in the minds of investors.

What are mergers of Mutual Funds?

Mutual Fund merger occurs when two or more investment schemes are combined to create a new scheme or build a new scheme altogether. When two schemes are merged the assets of the transferor scheme are merged with the transferee scheme. When the merger takes place, the AMC has to comply with the SEBI guidelines for merger of mutual fund.

According to SEBI GUIDELINES for merger of a Mutual Fund,

- The AMC has to provide a 30days notice to its unitholders.

- Unitholders shall be provided with relevant financial information for making appropriate decision.

- The tax impact of such merger shall be communicated to the unitholders.

Such guidelines shall be complied in merger of mutual fund. In the recent time, there has been a merger of Larsen &Turbo Mutual Fund and HSBC Mutual Fund. The later, has acquired the former mutual fund and is merged under the name of HSBC Medium Duration Fund.

Does Mergers of Mutual Funds affect investors from Tax perspective?

Basically, the investors don't have to pay taxes for the units held by them during a merger. However, they would be liable to pay tax when they redeem the units during the merger of schemes of mutual funds. Redemption of units is when the unitholders are given an exit opportunity before the existing scheme merges into new scheme. If the unitholder decides to continue with the new scheme there shall be no tax liability in such cases.

Merger of L&T Mutual Fund and HSBC Mutual Fund

HSBC Mutual Fund is an abbreviation for Hong Kong and Shanghai Banking Corporation. HSBC Mutual fund is a part of HSBC Securities and Capital Market Pvt Ltd. It is one of largest AMCs in India and has a total corpus of 12637.2 crore. The age of fund is more than 20 years in India and has a strong market presence in every sector. HSBC AMC was set up in the form of trust according to Indian Trusts Act 1882. HSBC has AUM of approximately 72,000 crores and it offers 48 different schemes to invest under equity debt and hybrid categories.

L&T AMC was established in 1996 and was operated under the name of L&T Finance Holdings Limited. It was set up to mange the needs of investors through its mutual fund schemes. L&T had AUM of around 78,000 crores and it had presence in every category of mutual fund which is equity, debt and hybrid. The company relies on sound and knowledgeable fund mangers who are responsible for investing the funds into right scripts and to provide assured return to the unitholders. The company had been successfully growing by acquiring other mutual fund schemes in the past and making their presence in equity more stronger.

It was around December 2021 when the HSBC AMC entered into an agreement with L&T for the merger of mutual fund. HSBC made a proposal to acquire 100% shares of L&T Investment Management,

which is a wholly owned subsidiary of L&T Finance Holdings for a purchase consideration of 425Million Dollars.

The L&T mutual fund was looking for a prospective buyer because its parent company L&T Finance Holdings had decided to focus on their primary activity of lending funds. Thus, they decided to divest their holding in this sector.

HSBC AMC had entered into an Agreement with L&T Finance Holdings to acquire 100%shares of L&T Investment Management Limited and also acquired necessary approvals required from SEBI for the acquisition. However, SEBI gave the approval subject to some condition which were:

- There shall not be any change in schemes of mutual funds except the change of names.

- There shall be changes to certain scheme, only after taking prior approval for such change from concerned authority.

The schemes of L&T shall be merged with HSBC schemes and all the assets of them shall be under the control of Board of Trustees of HSBC AMC. The scheme remains the same however only the names of such schemes shall change. The NAV and all other things shall remain intact, the unitholders shall not panic as it shall be a minor change. Thus, the merger was approved and the scheme was going to be managed by HSBC Fund Managers from 26th November 2022.

IDBI MUTUAL FUND and LIC MUTUAL FUND

IDBI bank has signed an agreement with LIC to transfer its mutual fund scheme to the later. The agreement has been signed to comply with the provision of section 7b of SEBI (Mutual Fund) Regulations,1996. In regulation 7B which specifies the Norms for shareholding and governance in mutual funds, after sub-regulation (3), the following proviso shall be inserted, namely:
"Provided that in the event of a merger, acquisition, scheme of arrangement or any other arrangement involving the sponsors of the mutual funds, shareholders of the asset management companies or trustee companies, their associates or group companies which results in the incidental acquisition of shares, voting rights or representation on the board of
the asset management companies or trustee companies, this regulation shall be complied with within a period of one year of coming into force of such an arrangement."

IDBI Bank, the parent of IDBI MF, is majority owned by LIC. Sebi rules bar a single promoter from owning more than 10% stake in two asset management companies (AMCs). Hence, there were either attempts to sell IDBI Mutual Fund or merge the assets with LIC Mutual Fund.
Thus for this reason there is a merger of IDBI Mutual Fund with LIC mutual fund.

Merger of Bank of Baroda Mutual Fund & BNP Paribas Mutual Fund

In the third quarter of 2019, Bank of Baroda (BoB) had entered into an agreement with BNP Paribas AMC for merger of Bank of Baroda mutual fund with BNP AMC. Baroda AMC was in the business of administering and managing mutual fund schemes of Baroda Mutual Fund while BNP AMC was in the business of administering and managing mutual fund schemes of the BNP Paribas Mutual Fund, undertaking advisory activities and acting as a portfolio manager.

The said merger took place without any consideration and the holding of BNP AMC shall be 50.7% while the remaining shall be of BoB AMC. The said merger was for strategic alliance as both of them could

leverage out each other's strengths.

The BNP Paribas legal work was handled by AZB Partners whereas the legal work of BoB was handled by Khaitan & Co.

Conclusion

Thus to conclude, merger of mutual funds is not a new thing in the market and the mergers shall continue to happen as the industry is growing at a good pace. This shall help the economy as it provides better returns for the unitholders which in turn would invest more.

As people would start investing more into scripts of the market there shall be new potential start-ups which shall want to list themselves and grab more funds from the market.

Vasundhara Sahu

Impunged notification

Provided under sec. 5 of the factories act, the question has been arise that Is covid 19 pandemic fall under the definition of ' public emergency' and the second question was arise that is with regards to statutory agencies can use their power to issue notification which seems that it is ultra virus to the power given under the constitution and in contravention to the constitutional vision behind it.

Power to exempt during public emergency (Section 5): In any case of public emergency the state government may, by notification in the official gazette, exempt any factory or class or description of factories from all or any of the provisions of this act except section 67 for such period and subject to such conditions as it may think fit, it is provided that no such notification shall be made for a period exceeding three months at a time (for the purposes of this section "public emergency" means a grave emergency whereby the security of india or any part of the territory thereof is threatened, whether by war or external aggression or disturbance)

In the era of 2020 whole world was surviving through a pandemic called "Covid 19" which resulted to disturbance to the economy of the country it can be catagorised as internal disturbance within the meaning of section 5 but cannot qualify as an internal threating the security of the state To seek to uphold the article 38,39,42 and 43 of the constitution by ensuring the decent working condition and dignity of individual . the article 21 of constitution provide guarantee "Right to life" to every person . so that any person life (including workers) cannot be left at the mercy of superior(Employer).

The notification contain the content which exempt applicability of section 51, 54, 55 and 56 and the article 59 of the factories act which was contrary to the objective of the factories act to the nervous working condition of workers . where power is also reduce due to pandemic.

The two notifications make significant departures from the mandate of the Factories Act, which were

- Increase the daily limit of working hours from 9 hours to 12 hours;

- Increase the weekly work limit from 48 hours to 72 hours, which translates into 12-hour work-days on 6 days of the week

- Negate the spread over of time at work including rest hours, which is typically fixed at 10.5 hours.

- Enable an interval of rest every hour, as opposed to 5 hours; and

- Mandate the payment of overtime wages

at a the proportionate to the ordinary rate of wages, instead of overtime wages at there eit as provided under Section 59.

Labour welfare is is an integral part of the vision behind the constitution . the labour laws are effectively and effeiciently made for social welfare and economic justice. The power given to employer or superior body cannot be misused by them and through any notification(which is impunged) The notification assumes the employers as the primary engines of growth who will see the country through these difficult times and hence, need to be fed and fired at all costs. In other words, their welfare is India's welfare. In stark contrast, in its one-sided imagination, workers are mere pegs in the system, 'soldiers' who can be called upon to perform their duties for the nation without expectation of personal gain or compensation. in the light of pandemic superior can not shift the economic burden over the poorest. All

of these were concluded in the case of "GUJRAT MAZDOOR SABHA VS STATE OF GUJRAT" in the era of justice the honerable court has used its power render under the article 142 and give their discretion on the case presented. Three Judges of supreme court namely, D.Y. Chandrachur, Indu Malhotra and K M Joseph have passed the judgement in this celebrated case of Gujarat Mazdoor Sabha v/s. State of Gujarat. Article 142 provides discretionary power to the Supreme Court as it states that the Supreme Court in the exercise of its jurisdiction may pass such decree or make such order as is necessary for doing complete justice in any cause or matter pending before it.

The Honourable Supreme Court rejected such submissions and held that, "The impugned notifications do not serve any purpose, apart from reducing the overhead costs of all factories in the State, without regard to the nature of their manufactured products" any specification. It is not reasonable to exempt all factories froni such cost without any specification. That it is indicative of the intention to capitalise on the pandemic to force an already worn-down class of society, into the chains of servitude.

The term "Public Emergency" in law must be read strictly because its invocation gives wide powers to the state to restrict individual freedom which further should be construed as unconstitutional. By applying the judicial interpretation of 'emergency', 'security of state' as laid down in various judicial pronouncements and as laid down under various judgments of hon'ble supreme court of India, section 5 of the Factories Act, should be interpreted in a manner that, the powers conferred under the section must be exercised only and only in the cases of grave emergency that threatens the security of the state such as war, external aggression, and internal disturbance and not in any circumstances other than that which is mentioned above.

The question arose in the case is that whether pandemic which is followed by the lockdown constitutes and did it fit in the definition of "public emergency" or not? The court held that although the pandemic has that tendency to cause the internal disturbance in the light of mass migration and the economic slowdown because of the implementation of the lockdown, it did not constitute internal disturbance in such a manner that it disturbs the peace and integrity of the entire nation. Emergency powers can only be invoked in extreme circumstances when the economy is in a severe condition as to disrupt the public order and threatens the security of the state. The court held the judgment that the situation of the pandemic followed by the lockdown would not construed as the public emergency. The government has imposed certain restrictions in the public interests such as

to restrict the public gatherings, shutting down the schools, colleges and educational institutions, etc however allowed the temples, commercial outlets for essential commodities to continue. Such selective response to the pandemic does not constitute the confidence in state action. The pandemic is an act of God over which no government or any political party has control over it. Lockdown on the other hand is an act of the executive authority and was taken by the Central Government to control the situation of the pandemic in the interest of public health and safety. Hence the state shall not take advantage of its own action since the lockdown cannot create a situation of economic emergency and simultaneously exercise extraordinary powers by claiming that the country is facing with 'public emergency'.

The court had also examined the purpose of the Act by stating that notification was unconstitutional because it had put a blanket exemption to all the factories registered under the said Act. The purpose of the Act was to prevent the exploitation of the workers and ensure the occupational health and safety of the workers. It dealt with two aspects for the protection of the labours, first that the overtime of the workers and secondly the payment of extra wages for such overtime. Looking further, at the minimum

hours of work, the court held that limiting the hours of the work is the most basic protection under the law and violation of the same shall leads to the exploitation of the worker. If the workers spent overtime then they should get extra wages for their work.

In this circumstances, both the constitutional principles and the constitutional visions must be adhered with and shall not become redundant but become even more central if it is to be resolved in a democratic and in a human way. Constitutional protections are genuinely needed when the question if of the rights and welfare of the labourers. It is also required to deal with the unpredictable matters like the pandemic. There is no doubt about the fact that extra ordinary powers and certain extra ordinary measures is required to be taken by the state and by union in certain matters as well as extra ordinary sacrifices is expected from the citizens of the nation but the same should be done within the ambit of the constitutional vision and must be within the constitutional limits. The powers should not be exercised in a manner which is detrimental to the constitutional validity or in other words is unconstitutional.

Therefore by striking down the notifications, the court held that "The State shall not permit the workers to be exploited in a manner that fulfils the protection provided under the Factories Act, 1948 illusory and the constitutional promise of social, and economic democracy into paper-tigers".

Yogita

Deciphering The Positions Of Msme(s) Under The Scheme OF IBC

Let us first understand what is CIRP AND PPIRP?

CIRP MEANS a corporate insolvency process where ,the financial creditors access the viability of debtors business and they seek options for the revival nd rehabilation.

PPIRP MEANS a restructuring process that can be initiated in respect of he corporate debtor classified as msme , wherein the debtors and the creditord informally work upon for a resolution of the default amount and at the same time the business functioning of the debtor is not affected or hampered .the resolution plan agreed by both the debtor and the creditor is finally approved by the nclt.

Lets understand what is more preferable for msme CIRP OR PPIRP?

What do you mean by msme ?

Mirco ,small and medium enterprise are critical for indias economy as they contribute significantly to its gross domestic product and provide employment to a sizeable population it is expedient to provide an efficient alternative od insolvency resolution process for entities classified as micro small and medium enterprise ensuring quicker cost effective and value maximizing outcomes for all the stakeholders in a manner which is least disruptive to the continuity of their business therefore it is considered expedient to introduce ppirp for msme sectors.

CLASS	CAPITAL INVESTMENT IN PLANT & MACHINERY OREQUIPMENT (CRORE)	CAP IN TURNOVER (CRORE)
Micro enterprise	1 crore	5 crore
Small enterprise	10 crore	50 crore
Medium enterprise	50 crore	250 crore

What is the minimum default amount for pre pack cases?

The ministry of corporate affairs vide its notification dated April 09,2021 specified ten lakhs rupees as the minimum amount of default for the matters relating to the pre packaged insolvency resolution process of corporate debtor.

Whereas in cirp the default amount is one crore rupees.

Background of ppirp ;-

After considering experience of insolvency code , the insolvency lw committee (ILC), at

its meeting on 16-5-2020 , decided to constitute a sub-committee to study pre packed insolvency process (PPIRP)for speedier resolution of insolvency , and submit their recommendations .accordingly , a sub committee of ILCwas constituted by Ministry of corporate affairs wide order dated 24-4-2020, under chairmanship of Dr. M S Sahooo , chairperson of IBBI.

The sub committee submitted its recommendations on 31st October ,2020 to government. On the basis of the recommendations of sub committee , it was decided to amend insolvency code an ordinance was issued on 4-4-202, making amendments to insolvency code. The amendments atre effective from 4-4-2021. The ordinance has been converted into IBC (amendment)act ,2021 w.r.e.f.4-4-2021.

A pre packaged insolvency resolution process (PPIRP) for corporate persons classified as micro,small and medium enterprise has been introduced by on 4-4-2021

Notable points under ppirp for msme's :

1.Nature of the process :-

Ppirp is basically in the nature of one time settlement with lenders before nclt

2. Introduction of ppirp :-

The chapter 3A is inserted (section 54A to section 54P)

3. Default amount to go for ppirp :-

When there is a default of amount 10 lacs or more .

4. Cooling period :-

Company has not undergone pre packed insolvency process or completed corporate insolvency process as the case may be during the period of three years preceding the initiation date.

5. Eligibility :-

Persons not eligible to be resolution applicant (section29A)

This is a departure from international practice , which allows CDs to submit resolution plan without any bar .there is strong case for allowing CDs ,irrespective of eligibility under section 29A of the code , to submit resolution plan that will maximise value of the CD. The FCs are now more in tune with the insolvency regime and can take commercially wise decisions and consequently , we are of the view that coc should have the power to decide on all resolution plans including by an ineligible promoter and should not be mandated under law . some kind of relaxtation like exemptions for non compliance with section 29Ac NPA of at least one year should be considered so that a promoter is not disqualified due to other group entities.

6.Authorisations and approvals :-

Board of directors in board meeting Shareholders to approve the move with special resolution in general meeting Financial creditors with 66%majority in coc meeting National company law tribunal

7. Committee of creditors :-

Coc is to be formed (financial creditors who are not related parties to the company)shall be formed to take the decisions in the process.

8. Appointment of resolution professional :-

While filing the application before nclt for initiating the ppirp the resolution professional shall be appointed by the lenders- as may be suggested by the

company or the choice of lenders.

9. Appointment of registered valuers :-

The resolution professional shall within 3 days of his appointment , appoint 2 registered valuers to determine the fair value and the liquidation value of the corporate debtor .

10. Fair value and liquidation value:-

The registered valuers appointed under regulation 38 shall submit to the resolution professional and estimate of the fair value and of the liquidation value computed in accordance with internationaly accepted valuation standards ,after physical valuation of the inventory and fixed assests of the corporate debtor.

11. Control over the company :

The existing management shall remain intact and the control of the company shall remain with the promoters / management of the company only and not taken over by the lenders in the ppirp unlike cirp. This is the biggest relief to the promoters of the company.

12. Resolution professional -the facilitator instead of manager :-

Resolution professional shall run the ppirp process as may be required uner the provision of ibc and direction of lenders and promoters. he shall act as facilitator between the company, lenders and the nclt to smoothly complete the process .

13. Ppirp cost :-

The cost of running the pirp is the responsibility of the company. As compared to cirp the coxt of running pirp is very lesser as basically it is kind of voluntary restructuring of the company by the promoters and hence no unnecessary litigation and delay in completing the process.

14. Duration:-

Time duration to complete the pirp is 90 days .

15. NCLT approval:-

Restructuring or resolution plan as provided by the compny shall be put before nclt for its approval only when 66% of the coc members vote in favour of such pan under pirp.

16. Preference to pirp over cirp by nclt :-

Where an application filed under section 54c is pending ,the adjudicating authority shall pass an order to admit or reject such application , before considering any application filed under section 7 or section 9 or 10 under the pendency of such application under section 54c,in respect of the same corporate debtor .

17. What if pirp failed ?

In case the coc not approved the restructuring plan then pirp ends there only and the company shall stand at its original position of pre pack initiation and there is no event of taking of the control of the company from the promotors / management of the company by the bankers/ coc.

What happens if both cirp and ppirp applications are being filed ?

Through the introduction of section 11A to the code , the central government has specially taken care of scenarios wherein the both cirp and ppirp applications are filed against the same corporate debtor . the nclt has been authorized to prioritise the ppirp application filed before the cirp application against the same corporate

debtor and is empowered to either admit or reject the application under ppirp before considering the application under cirp.

But in cases where the cirp application has been filed first and then the ppirp application, the 14 days rule is applicable according to which if the ppirp application is filed within 14days from the cirp application the ppirp shall be given priority and in case it is filed after 14days , the cirp application should be dealt with first.

The entire ppirp process is to be completed within 120 days .the resolution professional has to submit a resolution plan before the nclt within 90 days from the date of initiation of the process and the nclt has to pass relevant orders within the further 30 days. In case the debtor and the creditor failed to finalise the resolution plan the resolution professional shall on the 90th day file an application for the termination of ppirp.

No reason to restrict the ppirp scheme to msme only

PPIRP has some inherent advantages compared to normal CIRP as explained above. In my view , there is noreason to restrict the scheme to corporate msme only and should be extended to all body corporates , maybe with some stricter controls. This is view of sub committee of insolvency law committee also.

Conclusion:-

We believe that the ppirp process is a great enabler to msme sector in india in the present situation of totally messed up business condition due to various reasons including covid19 pandemic. Msme can take advantage of this expedient initiative of pirp process and streamline their businesses by having the restructing of debts with lenders with the blessings of nclt. since the process shall be finally approved by the nclt tribunal the bankers / lenders shall be more enthusiastic to try for the best resolutions as there would be no suspicion on the part of bank officials with respect to the concessions given to the msme companies under pirp induling any haircut taken by the bankers.

It will be a boon for the msmes and consequently boon for the nation at large as after all as per the govt. data approximately 70% companies falls under msme sector in india.