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> General Counsel, Chief Legal Officer and Member of Executive of Pearson

6th Edition International IP Conclave & Awards (IIPCA) 2019 Concludes Successfully

THE TWO FACES OF JUDICIAL ACTIVISM

- Ambuja Cement Corporate Legal Team

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# EDITOR'S PICK

# **BUDGET MUSINGS**

he much-awaited Union Budget 2019 was presented Friday, February 1, by Interim Finance Minister Piyush Goyal in the absence of Union Finance Minister Arun Jaitley, who is currently in the United States for medical treatment.

The salaried middle-class, farmers and informal sector workers are among those who have emerged the winners in this Budget; however, there are a few other points that deserve mention.

According to Mr. Goyal, over one crore people have filed income tax for the first time post demonetization. Our take is that while demonetization may have resulted in an increase

that while demonetization may have resulted in an increase in annual income tax turnover by bringing unbooked income to light; small and micro businesses with borrowings of under INR 1 million are yet to fully recover from the move.

India has become the second largest startup hub, said Mr. Goyal. According to NASSCOM, however, it is the third largest startup hub with Israel looking to usurp even that position in recent times.

INR 4 lakh crore has been allocated for Mudra Yojana loans, 70 percent of the beneficiaries of which happen to be women. Going by a recent analysis, however, only three percent of these loans can generate a monthly income of over INR 10,000, with around 40 per cent of funds not even being put to use.

Mr. Goyal stated that India will lead the world in transport with EV and renewable energy. However, this is shrouded in uncertainty as apart from the Government's much delayed FAME (Faster Adoption and Manufacture of Hybrid and Electric Vehicles) scheme, no other concrete initiatives are yet in place. Add to this, pollution and air quality in major metros like Delhi has been steadily worsening.

According to Mr. Goyal, Artificial Intelligence-based technology will help better the MSME sector. However, he has not provided any clarity on data privacy and protection. The commitment to source 25 percent material from SMEs and 3 per cent from women-owned SMEs, however, will help raise the number of small businesses in the country. While the overall response to the Union Budget 2019 has largely been positive, the success of these measures, as with most other policy initiatives, will remain a function of time.



Aakriti Raizada Sharma

Founder & Managing Editor Legal Era Magazine, Legal Media Group

Kindly share your opinions/feedback at editor@legalera.in

# Sth ANNUAL EXTERNION STATES ST

# GLOBALIZATION FOR BUSINESS & LAWYERS

# **KEY SPEAKERS:-**



Hon'ble Ravi Shankar Prasad Minister of Law & Justice and Electronics & Information Technology, Government of India (Invited)



Dr. Lalit Bhasin President Bar Association of India



Shardul S. Shroff Executive Chairman Shardul Amarchand Mangaldas & Co



Hon'ble Suresh Prabhu Minister of Commerce & **Industry and Civil Aviation** Govt. of India (Invited)



G. R. Raghavender Joint Secretary -Department of Justice Ministry of Law & Justice



V. Lakshmikumaran Founder and Managing Partner Lakshmikumaran & Sridharan (L&S)



Hon'ble Justice A. K. Sikri Judge Supreme Court of India



Mahaveer Singhyi Joint Secretary (CT) Ministry of External Affairs of India



**Mathew Sherratt QC** Barrister Carmelite Chambers, UK

And many more...



Hon'ble Justice Mohit Shah Former Chief Justice Bombay High Court



**Amarjeet Singh Chandhiok** Senior Advocate & President INSOL India



Vikram Nankani Senior Counsel Bombay High Court



Padma Shri Dr. T.K. Viswanathan Chairman, Bankruptcy Law Reforms Committee



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**Robert Wyld** Partner, Johnson Winter & Slattery, and Immediate Past Co-Chair, IBA **Anti-Corruption Committee** Australia



















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- Renewable Energy: Profitable Going Green What Are The Latest Trends?
- Digital Health & Pharma: Latest Sector Developments For Businesses
- Cryptocurrencies, Blockchain And Smart Contracts: New Financial Contracting Model Or Risky Path For Hiding Your Suspicious Transactions?
- FinTech New Way Or No Way
- Beyond Our Borders: Cross-Border Challenges In Data Privacy: How To Respond To Global Data Breach: Around-The-Clock Action Across The World
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- Blockchain Technology Impacting Privacy?
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- How Asia Pacific Countries And Companies Are Dealing With Disruption In International Trade Law & Policy?
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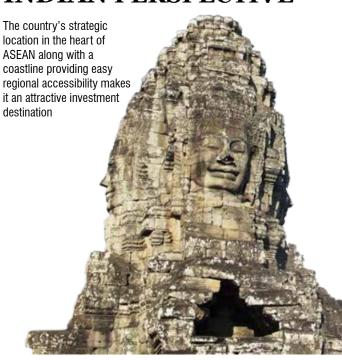


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# READERS' NOTES BY THE PEOPLE FOR THE PEOPLE

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SUBRAMANIAM VUTHA Proprietor, Subramaniam Vutha; Advocate



Legal Era helps me get a synopsis on all major developments around the corporate world. It gives insights on major tax laws and amendments. I enjoy reading the leader speak section and the interview of Mr Amarjit Singh was quite insightful and motivational. I like the section on view points and also on deconstruction of various judgments which has helped me immensely while working with legal firms both in India and internationally. The magazine comes out as a magazine of professionals, by professionals, and for professionals. My best wishes to the entire team and look forward to all your future publications

VIKAS CHADHA Executive Director and Chief Financial Officer, Berggruen Hotels Pvt Ltd

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# AMID ROW OVER APPOINTMENT, JUSTICES DINESH MAHESHWARI, SANJIV KHANNA TAKE OATH AS SUPREME COURT JUDGES

Friday, January 18, 2019



Justices Dinesh Maheshwari and Sanjiv Khanna were swornin as Supreme Court judges on Friday, January 18.

The oath was administered by Chief Justice of India (CJI) Ranjan Gogoi during the swearing-in ceremony held in court number 1 of the apex court.

With the swearing-in of the Justices, the strength of the SC has gone up to 28. The sanctioned strength of judges in the Supreme Court is 31. Justice Dinesh was the Chief Justice of the Karnataka High Court whereas Justice Sanjiv was a Judge in the Delhi High Court.

Born on 15 May, 1958, Justice Dinesh graduated in Law from Jodhpur University in 1980. He enrolled as an Advocate on 08 March, 1981, and practised mainly on the Civil and Constitutional sides. His Lordship took oath as the Chief Justice of the High Court of Karnataka on 12 February, 2018.

Born on 14 May, 1960, Justice Sanjiv graduated from Delhi University in 1980. He enrolled as an Advocate with the Bar Council of Delhi in 1983. His areas of practice included taxation, arbitration, commercial, environment & pollution and writ jurisdiction matters in the Delhi High Court.

He was elevated as an Additional Judge of the Delhi High Court on 24 June, 2005, and became a permanent Judge on 20 February, 2006.

# DANCE BARS TO REOPEN ACROSS MAHARASHTRA

Friday, January 18, 2019

Paving the way for grant of licenses and reopening of dance bars in the state, the Supreme Court said that the state could neither exercise "social control" with its own "notion of morality" nor take exception to staging dance performances per se.

A bench of Justices A.K. Sikri and Ashok Bhushan said, "It needs to be borne in mind that there may be certain activities which the society perceives as immoral per se. It may include gambling (though that is also becoming a debatable issue now), prostitution etc. It is also to be noted that standards of morality in a society change with the passage of time."

Several provisions of the Maharashtra Prohibition of Obscene Dance in Hotels, Restaurant and Bar Rooms and Protection of Dignity of Women (working therein) Act, 2016, including installation of CCTV cameras in dance bars, were quashed by the Supreme Court, saying it was "totally inappropriate and amounted to invasion of privacy".

"Social change is of two types, continuous or evolutionary and discontinuous or revolutionary. The most common form of change is continuous. This day-to-day incremental



change is a subtle, but dynamic, factor in social analysis," the bench said.

"It appears from the history of legislative amendments made from time to time that the respondents (Maharashtra and others) have somehow developed the notion that such performances in dance bars do not have moralistic basis," the court said. Many of the conditions stipulated for obtaining license were virtually impossible to perform, it said.

# APEX COURT SAYS MODIFIED VEHICLES NOT ELIGIBLE FOR **REGISTRATION**

Thursday, January 10, 2019

Hereon, transport authorities will not register vehicles that have been modified to resemble any sleek foreign brand.

Overturning a Kerala High Court decision, a SC bench of Justice Arun Mishra and Justice Vineet Saran Tuesday ruled that the vehicle being registered must meet the 'original specifications by the manufacturer' as mandated under Section 52(1) of the Motor Vehicle Act.

Minor fitments or alterations like painting will not disqualify vehicles for registration, the bench said. Structural changes to the body or chassis of the vehicle would render it ineligible for registration. "The emphasis of section 52(1) is not to vary the 'original specifications by the manufacturer'.

Justice Mishra said that no vehicle which did not match the original specifications of the manufacturer could be



allowed to be registered. "The object and the clear intent of amended Section 52 is that the vehicle cannot be so altered that the particulars contained in the certificate of registration are at variance with those 'originally specified by the manufacturer'," the Supreme Court bench said.

# SC TELLS SEARCH COMMITTEE TO SUBMIT A PANEL OF NAMES FOR LOKPAL BY FEBRUARY 28

Thursday, January 17, 2019

The Lokpal Search Committee was asked by the SC to complete its deliberations and submit a panel of names for selection of Lokpal by February 28.

A SC bench helmed by CJI Ranjan Gogoi asked the search committee led by retired SC Judge, Ranjana P Desai, to submit its recommendation to the Selection Committee headed by Prime Minister Narendra Modi. The plea for the appointment of Lokpal will be heard on 7 March, the court said. All necessary infrastructure should be provided to the search committee, the court directed the Centre.

The court was requested by advocate Prashant Bhushan to direct the search committee make public minutes of every deliberation and also the names in the panel submitted to the selection committee. The court replied that as soon as the search committee submitted the names during hearings on 7 March, it will give the names to Bhushan.

# PETITIONS CHALLENGING STAY OF MINORITIES IN INDIA SANS VALID DOCUMENTS KEPT PENDING BY SUPREME COURT

Monday, January 14, 2019



A challenge to two notifications on the Passport Act and Foreigners Act - allowing all religious minorities except Muslims to stay in India even if they happened to enter sans valid documents - was kept in abeyance by the SC. The petition was kept pending by a bench of Chief Justice Ranjan Gogoi and Justices Ashok Bhushan and Sanjay Kishan Kaul, saying that a Bill to amend the Citizenship (Amendment) Act was pending before the Rajya Sabha after being passed by the Lok Sabha.

The government could not have issued two notifications in 2015 without amending the law, the petitioner contended.

The court kept the petition pending and pointed to propriety, as a Bill to amend the Acts was pending before the Parliament.

# CENTRE ISSUED NOTICE BY SC AGAINST ORDER ALLOWING AGENCIES TO MONITOR COMPUTERS

Monday, January 14, 2019



A notice was issued to the Centre by the Supreme Court on petitions challenging a rule that allows government agencies to intercept communication on all social platforms and electronic devices. The government on December 20 had issued a notification allowing 10 government agencies to monitor and decrypt any information stored in electronic devices on grounds of internal security.

A political firestorm was triggered by the order and the Opposition flagged it as "dangerous" and "likely to be misused", causing a ruckus in the Rajya Sabha.

Among the agencies empowered to intercept were the IB, CBI, Tax Department, Narcotics Control Bureau, Enforcement Directorate, Directorate of Revenue Intelligence, National Investigation Agency, Research and Analysis Wing, Delhi Police Commissioner, and the Armed Forces Directorate of Signal Intelligence. In the Rajya Sabha, Finance Minister Arun Jaitley maintained that "Authorized agencies have right under the law to intercept any attempt to subvert national security, defence, public order or integrity of India".

However, in a tweet, Congress president Rahul Gandhi said, "Converting India into a police state isn't going to solve your problems, ModiJi. It's only going to prove to over 1 billion Indians what an insecure dictator you really are."

# SENIOR ADVOCATES SANJAY JAIN, K M NATARAJ APPOINTED AS ASGS BY PRESIDENT RAM NATH KOVIND

Wednesday, January 16, 2019

Senior Advocates Sanjay Jain and K.M. Nataraj were appointed as Additional Solicitor Generals of India for the Supreme Court by President Ram Nath Kovind. According to an official notification issued on 15 January, "The President is pleased to appoint Sanjay Jain, senior advocate, as Additional Solicitor General of India for the Supreme Court with effect from the date of assumption of charge of the office till June 30, 2020, or until further orders, whichever is earlier." A similar notification appointing Nataraj as ASG was also issued. Nataraj was appointed as ASG for the southern zone earlier in April 2015. In 2014, Jain had been appointed as ASG for the Delhi High Court and he resigned from the post last year.



# NOTICE ISSUED FOR ENGAGEMENT OF TWO SOFTWARE CONSULTANTS IN SCLSC OFFICE

Monday, January 07, 2019



A notice was issued on 7 January by the Supreme Court Legal Services Committee (SCLSC) with regard to providing assistance to litigants sitting in far-flung corners of the country in terms of monitoring the progress of their case through the SCLSC website. As per the notice: "The National Legal Services Authority under Section 3A of the Legal Services Authorities Act, 1987, constituted a Committee called Supreme Court Legal Services Committee (hereinafter called "SCLSC") with a view to provide easy and inexpensive access to the Hon'ble Supreme Court.

The SCLSC is a Statutory Body and is a Government Department under the Department of Justice, Ministry of Law & Justice, Government of India." The notice further stated: "SCLSC intends to integrate the software data, prepared by E-Committee, with the website/online application module data, prepared by NIC, so that the litigant siting in the farflung corner of the country can monitor the progress of his case through the website of the SCLSC. Therefore, in order to integrate the software data with the website of the SCLSC, it is proposed to appoint two software Consultants (one to take care of the software needs and another to take care of the hardware needs) in the office of the SCLSC."



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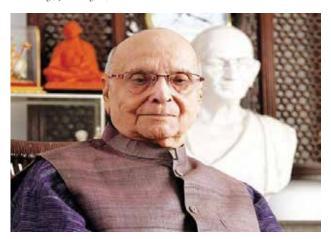
### HIGH COURT & TRIBUNAL NEWS AROUND THE NATION



# **Bombay High Court**

# FORMER ACTING CHIEF JUSTICE OF BOMBAY HC CHANDRASEKHAR SHANKAR DHARMADHIKARI PASSES AWAY

Thursday, January 3, 2019



Padma Bhushan awardee and former Acting Chief Justice of the Bombay High Court, Chandrashekar Shankar Dharmadhikari (92), passed away on January 3 at a private hospital in Nagpur.

Known as the most independent and fearless judge, Justice Dharmadhikari delivered landmark judgments related to the Rights of Women, Adivasi Children, Insane People, and Prisoners.

In one of his judgments delivered during the Emergency, he held that apart from the Constitutional Right, the Right to Life was a natural and human right, and therefore, even during the Emergency, a citizen had the right to approach the High Court as the natural and human right to life could not be taken away.

Born into a family of lawyers (November 20, 1927), Justice Dharmadhikari completed his M.A. L.L.B. from Nagpur University.

He served as a lawyer from 1954 to 1972; Government Pleader at the High Court of Bombay, Nagpur Bench, from 1965 to 1972; Judge of the High Court of Judicature at Bombay with effect from July 13, 1972; and later Acting Chief Justice of the Bombay High Court.

He retired on November 20, 1989. Thereafter, from July 7, 1991 to November 20, 1992, he was Chairman of the Maharashtra Administrative Tribunal and was later appointed Chairman of the Dahanu Taluka Environment Protection Authority.

# STATE DENYING LITIGANTS JUSTICE BY DELAYING NEW COURT BUILDING PLOT: BOMBAY HC

Tuesday, January 22, 2019

The state government was "essentially denying justice to litigants" by delaying a decision on allocation of a new building for the High Court, the Bombay High Court said. Litigants and judicial staff were being forced to continue work from the current 138-year-old building which had inadequate space, the court said. The Maharashtra government was directed to decide within the next six months on allocating space for a new, spacious High Court building with all the required infrastructure by a bench of Justice A.S. Oka and Justice M.S. Sonak. A Public Interest Litigation (PIL) filed by lawyer Ahmad Abdi highlighting the need to shift the court premises to a new, more spacious building was being heard by the High Court.

The current building was meant to house only six to seven courts while the Bombay High Court had a sanctioned strength of 94 judges, and at any given time, around 35 to 50 judges were serving in the court.



"Even the state is not disputing the fact that there is a need for more space. By continuing the functioning of the High Court from the current building, the state government is effectively denying access to justice to litigants," the bench said.

# **Gujarat High Court**

# GUJARAT HIGH COURT TELLS VARSITIES NOT TO MAKE DEGREES FARCICAL

Monday, January 21, 2019

The Gujarat High Court observed that every university must maintain high educational standards and not make their degrees farcical, even as it refused to direct a varsity to grant affiliation to a nursing college, which had certain deficiencies in infrastructure and faculty staff.

Justice J.B. Pardiwala further said, "It must be understood that a university is a center of higher learning and must maintain very high standards. A degree from a university must reflect the knowledge which that degree holder possesses. If for instance, a person is granted an M.Sc. degree in Physics from a university but does not even have the knowledge of a high school student in Physics, then that degree will obviously be farcical."

"It is well known that in our country in many states, such farcical degrees have been granted and this obviously adversely affects the educational standards in the country. If our country is to progress, high standards of education must be maintained, and this requires academic rigor. Education is a sacred matter, and strict discipline and high standards must be maintained in this connection," the court observed.

Upholding Sardar Patel University's decision to not renew the affiliation of Vinayaka College of Nursing in Nadiad, the Gujarat HC observed, "No college can claim affiliation as of right. It is only for the university in its discretion to grant affiliation or not. This court cannot arrogate to itself the powers to grant affiliation, nor can it direct the university to grant affiliation."

"An act which the statutory authority has to do cannot be done by this court, and this court must exercise restraint in this connection," the court said.

# STATE SHOULD EXPLAIN STAND ON PROHIBITION: GUJARAT HC

Saturday, January 21, 2019



The state government has been asked by a bench of the Gujarat High Court to give its detailed stand on the prohibition law following six petitions challenging the law. The state will have to submit its reply at the next hearing.

Three petitioners, including Piyush Patel, had challenged the Act in the HC in 2018. The government could not prevent them from consuming liquor within four walls under the Right to Privacy, the petitioners had argued.

In the meantime, five more petitions, including a PIL, were filed before the HC challenging the prohibition law on same grounds.

Bandish Soparkar, counsel for the petitioners, said, "The HC has asked the government to come up with a clear stand by February 11. All the pleas have mostly uniform contentions that the people of the state have a right to consume liquor under the Right to Privacy as per the Supreme Court."

# **Delhi High Court**

# ₹462 CRORE PENALTY DEMAND ON HINDUSTAN LEVER STAYED BY DELHI HIGH COURT

Wednesday, January 16, 2019

The demand of ₹462 crore made on Hindustan Unilever Ltd. by the National Anti-Profiteering Authority has been stayed by the Delhi High Court. The National Anti-Profiteering Authority claimed that the consumer goods' major failed to pass on the benefits of lower goods and service tax rate. However, the Authority was directed by the court to not take any coercive action or continue penalty proceedings against HUL till it finally determined the matter. The court asked HUL to deposit ₹90 crore in two installments, i.e., ₹50 crore by March 15 and ₹40 crore by May 15, to the Consumer Welfare Fund. HUL profiteered ₹419.67 crore due to sales realization following an increase in base prices after a GST rate cut in two slabs—from 28 percent to 18 percent and 18 percent to 12 percent, the Authority had ruled in December 2018. The Authority also accused HUL of availing transition credit of ₹76.06 crore, which wasn't passed to consumers by reducing prices.



# Karnataka High Court

# CANNOT HAUL UP AUTHORIZED SIGNATORIES FOR CHEQUE BOUNCE: KARNATAKA HIGH COURT

Monday, January 21, 2019

The Karnataka High Court observed that every person who signs a cheque on behalf of a firm cannot be hauled up in case of bouncing of the financial instrument.

The court made the observation while quashing criminal proceedings against two persons in a case of cheque bouncing.

"Every person signing a cheque on behalf of the company on whose account the cheque is drawn does not become the drawer of the cheque. He is only an authorized signatory," Justice HP Sandesh said.

In the instant case, the judge said that the liability against the duo - Shaju K Nair and Riya Nair - was vicarious in nature due to their legal status as MD and Director of Clariya Marketing Services Ltd., Hospet, Ballari. Without making their company a party to the proceedings, they cannot be prosecuted, the judge said.

An Anantpur, Andhra Pradesh-based company, SLV Steel Alloys Pvt Ltd, alleged that Shaju and Riya issued a cheque



of ₹53.7 lakh dated January 2, 2012 which came to be dishonored. The duo failed to adhere to the terms of the oral contract, the complainant said, and lodged a private complaint before the JMFC court in Ballari, which initiated proceedings against the two under Section 138 of the Negotiable Instruments Act.

# DELAY IN GRANT OF LINGUISTIC MINORITY STATUS TO SOME SCHOOLS UPSETS KARNATAKA HIGH COURT

Wednesday, January 16, 2019



The delay in granting linguistic minority status to some schools run by linguistic minorities has upset the Karnataka High Court.

Seats had been allotted to students in these schools under the Right to Education (RTE) Act by the Education Department. The government was intentionally delaying granting them the status, the schools alleged in the High Court.

Earlier, the HC called it "not a happy state of affairs" and said that the Union government, state government, and National Commission for Minority Educational Institutions were playing a blame game.

The Centre has been directed to issue a notification in three months, after which the NCMEI will grant minority status to the schools.

The Union government had filed a memo before the HC in March 2018.

In August 2018, the court, based on this memo, directed the state government to identify the linguistic minorities in Karnataka.

A notification was issued on November 5, 2018 by the state government, enlisting languages including Urdu, Telugu, Tamil, Malayalam, Tulu, Lamani, Hindi, Marathi, and Gujarati for declaration of linguistic minority status of educational institutions.

The counsel for the NCMEI, which ultimately grants certificate to educational institutions, argued in the High Court that there was difficulty for the Commission in acting upon the notification of the state government.

# Karnataka High Court

# TOO MUCH WORK NOT AN EXCUSE FOR DELAY IN FILING CHARGE SHEET: HC TO POLICE

Monday, January 22, 2019

"Too much work" cannot be an excuse for the police to delay filing the charge sheet in a case, the High Court ruled.

A charge sheet had not been filed by the CID police in the 'insurance scam' unearthed a year ago. There were a total 22 cases against the accused requiring more time, the prosecution said.

This resulted in the High Court relaxing the bail conditions of the accused. Accused Rahul Bansal allegedly duped an elderly couple of ₹8.8 lakh in the current case. The accused would mark their attendance before the station house officer every fortnight till the charge sheet in the case was filed, as per the bail condition.

The charge sheet was not filed even after one year at which point the accused approached the HC.

The accused said that he had to travel several locations for his business, and due to his medical conditions, the rider of his attendance before the SHO of the respondent, the police, was acting oppressively.

The case had been transferred to the CID for investigation and there were as many as 22 cases against the accused,



the government advocate submitted. Hence, there was a delay in filing the charge sheet.

But he argued that the bail conditions should not be relaxed as there was a possibility of the accused not appearing before the investigating officer.

An unimpressed HC said, "Whatever may be the investigating agency, the charge sheet has to be filed within a reasonable time. For more than one year, the charge sheet is not filed in this case. The Sessions Court has imposed another condition, namely, petitioners shall not leave the jurisdiction of the trial court without prior permission."

# **Allahabad High Court**

# PLAYGROUND ON CAMPUS MANDATORY FOR SCHOOL'S AFFILIATION, RULES ALLAHABAD HIGH COURT

Wednesday, January 23, 2019



A playground on the campus is a necessary and essential condition for a school's affiliation, ruled the Allahabad High Court.

The playground and school building should be part of one compact and contiguous land area, the court said. If the playground was on separate land, students would have to pass through a residential area, road, etc. which defeated the purpose of a playground, the court said.

Justice Ajay Bhanot dismissed a petition filed by Apple Grove School of Saharanpur and said that the existence of a playground was a prerequisite for grant of affiliation to a school.

The CBSE order dated November 1, 2018 was challenged by the petitioner school, which maintained that though it had a playground, the same was located on separate land. The school had applied for construction of a foot-overbridge over the public road but was rejected.

DISCLAIMER: It may be noted that the Legal Era edition publishes select news pieces collated from various sources, based not necessarily on their timeliness and topicality but their interest to its readers.





### LEGAL UPDATES FROM ACROSS THE GLOBE



# **United States of America**

# COURTS CANNOT ORDER ARBITRATION IN CASES INVOLVING CONTRACTED WORKERS: US SC

Tuesday, January 15, 2019

Courts lack authority under the Federal Arbitration Act to order arbitration in cases involving contracted workers engaged in foreign or interstate commerce, the US Supreme Court ruled 8-0 Tuesday.

In a class action lawsuit brought by Oliveira against trucking company, New Prime, Oliveira claimed that New Prime treated its drivers as employees and did not compensate them as per statutory wage minimums. New Prime argued that the court compel arbitration as per the Federal Arbitration Act and the parties' agreements.

At the heart of the dispute was "contracts of employment". Non-traditional contracted workers were exempt from section 1 of the Federal Arbitration Act, the court ruled.



# LOW THRESHOLD SET FOR REPEAT VIOLENT OFFENDERS' SENTENCE

Tuesday, January 15, 2019

The bar was set low on the amount of violence needed to trigger longer prison sentences for some repeat offenders by a divided Supreme Court.

The Judges were divided on the provisions of the Armed Career Criminal Act, a 1984 law that sets a minimum 15 years in prison for gun crimes if the defendant has three or more violent felony convictions.

One of the court's consistent liberals, Justice Stephen G. Breyer, joined four most conservative colleagues in ruling that a Florida man with a lengthy criminal past deserved the enhanced sentence.

But another conservative, Chief Justice John G. Roberts Jr., joined the three remaining liberal Justices in dissent, and agreed that the majority opinion turned "glorified pickpockets, shoplifters and purse snatchers" into violent criminals for purposes of the act.

The case concerned one Denard Stokeling, who was arrested for a Miami Beach restaurant robbery in 2015, and confessed to carrying a firearm and ammunition in his backpack, after which, prosecutors said he be sentenced under the ACCA.

Stokeling had been earlier convicted of kidnapping, robbery and home invasion but he claimed that the robbery



conviction did not count as sufficient force to constitute a violent felony was not required by Florida law.

However, Florida law is a sufficient fit with the statute and past decisions of the court was ruled by Justice Clarence Thomas.

Justice Thomas wrote, "Robbery that must overpower a victim's will — even a feeble or weak-willed victim — necessarily involves a physical confrontation and struggle. The altercation need not cause pain or injury or even be prolonged; it is the physical contest between the criminal and the victim that is itself 'capable of causing physical pain or injury.'"

# United States of America

# PFIZER'S METHOD OF **OBTAINING EMPLOYEE CONSENT FOR ARBITRATION INADEQUATE: SUPERIOR COURT OF NEW JERSEY**

Thursday, January 17, 2019



Pfizer's method of obtaining employee agreement for arbitration was inadequate, ruled the Superior Court of New Jersey, Appellate Division.

Pfizer emailed a training module informing its employees about mandatory arbitration policy to obtain employee consent for arbitration. At the end, employees were asked to click an "acknowledge" button to signify agreement. In the event employees did not complete the training module but continued working for Pfizer, they would be taken as bound by the arbitration policy after 60 days.

According to the court, these procedures were insufficient court for an employer to extract its employees' agreement for arbitration.

Dissemination through a training module and having employees click "acknowledge" after viewing the arbitration policy were inadequate procedures.

Accordingly, the court reversed the trial court's decision validating Pfizer's acknowledgment process.

# MAJOR FOSTER CARE LEGISLATION IN THE WORKS

Friday, January 18, 2019



The first step towards passing a bill expected to fix the state foster care system holding 7,000 children was taken by lawmakers. The biggest change in the bill is needing the Department of Health and Human Resources to place foster care children into a managed care organization run by a private company capable of taking up to 10 per cent of state funding for "administrative" costs.

The House Bill 2010 was unanimously passed on a voice vote by members of the House Committee on Senior, Children and Family Issues.

Children will not fall through the cracks if moved around by switching to managed care, said DHHR Deputy Secretary Jeremiah Samples.

"It's complicated and it's difficult, and we need another set of eyes to support us through this process. Beyond just that, though, there's a certain level of expertise that can be brought to the table in terms of managing populations for the long-term," Samples said.

H.B. 2010, unlike most bills, will have to work its way through three committees. In the event it is passed, the state will partner a private company to manage the healthcare of the state's foster care children. When the new fiscal begins July 1, the shift to a managed care organization will take place.

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# CHARGES OF BREACH OF ASSET DECLARATION RULES AGAINST NIGERIAN CHIEF JUSTICE

Tuesday, January 15, 2019



Nigerian Chief Justice Walter Nkanu Onnoghen was set to stand trial on six charges of holding foreign bank accounts and failing to declare assets. Onnoghen's team of 94 lawyers was present to defend him on these

claims even as he remained absent. A statement was released by the Nigerian Bar Association (NBA), condemning the trial as an assault on the judiciary by government agencies. According to the NBA, the Code of Conduct Tribunal (CCT) did not follow proper procedure as set out in the precedent. The NBA, in its statement, observed that the presidential election was quickly approaching. The NBA argued that the speed with which charges were brought against the Chief Justice and the trial called hinted at an attempt to intimidate the judiciary ahead of the elections. Two years ago when Onnoghen was appointed to the position, the current Nigerian president had caused unprecedented delay of appointment, the NBA said.



# RESTRICTION OF FOREIGN OWNERSHIP OF MEDIA UPHELD BY RUSSIAN COURT

Thursday, January 17, 2019



Restriction of foreign ownership of media is legal, ruled the Russian Constitutional Court. A law restricting foreign ownership of media to 20 percent was upheld by the court. The case came to the court "after arbitration courts declared a dual Russian-Dutch citizen's 49 percent stake in a radio station illegal." The reason for the ownership limit was "to prevent the strategic influence and control of media" which "may threaten the state's information security." The court also ordered lawmakers to make certain portions of the bill clearer.



# **United States of America**

# LAWMAKERS MULLING BILL TO CHANGE HOW JUSTICES ARE CHOSEN IN FUTURE ELECTIONS

Wednesday, January 16, 2019

Lawmakers are considering a bill to change how Justices are chosen in future elections months after voters elected two new Justices to the state Supreme Court.

A modified version of the House Bill 2008 was approved by the House Judiciary Committee. If no Supreme Court candidates receive at least 40 percent votes, the bill will require a runoff election.

That share of the votes wasn't secured by either of the two newly elected Justices. John Shott, R-Mercer, House Judiciary Chairman, pointed out that the Legislature could not retroactively apply the law although the newly elected Justices would have failed to meet the 40 percent threshold if it were in effect last fall. Shott said, "I think that race raised an issue — because of the number of

candidates — that this was something we should probably fix."

Last year too, two Democratic Justices resigned after a month-long scandal involving lavish spending in court and a subsequent impeachment investigation. Asked to choose new Justices, voters elected the first Republican speaker of the House – Tim Armstead – in over 80 years, and a Republican who represented the state's third district in Congress - Evan Jenkins.

However, no candidate secured a majority of votes (not even 40 percent). Armstead won the seat held by retired Justice Menis Ketchum by 26 percent of the vote while Jenkins won the seat held by retired Justice Robin Davis by 36 percent of the vote.



# **United States of America**

# CHIEF JUSTICE OF NEW MEXICO SUPREME COURT APPEALS LAWMAKERS FOR FUNDING

Thursday, January 17, 2019



The Chief Justice of the state Supreme Court asked for help this legislative season, sending out the message to lawmakers that while there was a lot of crime, there were not enough resources to tackle it. Lawmakers were reminded by Chief Justice Judith Nakamura that for the past 10 years, they'd been battling cuts, vacancies and overworked court employees. The additional funding from the legislature in the last few years had helped, but there was still a long way to go, said Justice Nakamura.

"For the first time in eight years, we can timely pay jurors. We will not be seeking loans or supplemental funding. And most importantly, we will not be directing our courts to stop holding jury trials," she said.

The courts were dealing with about \$357,000 new cases every year and the caseload just kept rising. However, they were struggling to recruit well-qualified judges and attorneys. As a solution to this problem, they were asking for \$650,000 for new training and education for judges and their staff.

"We all need to reinforce our skills and stay current with changes in the substantive law, procedural rules and the best practices in case flow management."

Justice Nakamura also said that New Mexico had too many courts, 197, many of which overlapped jurisdictions, making the system inefficient. She proposed consolidating some.

For greater transparency, they were asking for \$1.8 million to make more than 80 million pages of court documents accessible to the public online.

# ST. REGIS MOHAWK TRIBE APPEALS SC TO RULE ON CONTROVERSIAL **SOVEREIGN IMMUNITY ISSUE**

Wednesday, January 16, 2019

The US Supreme Court is being asked by the Saint Regis Mohawk Tribe to rule on a controversial sovereign immunity issue. The Federal Circuit Court of Appeals last July ruled that the tribe cannot assert sovereign immunity in connection with the drug patents it owns. According to the tribe, however, the decision is wrong and needs to be overturned by a higher power.

The tribe and its drug patent partner have written to the Supreme Court, "The Federal Circuit applied the wrong legal test and arrived at the wrong conclusion."

As per docket no. 18-899, the response to the tribe's petition is due February 11. Drug companies/respondents have challenged the patents owned by the tribe.

The patents were acquired by the tribe from Allergan, developer of RESTASIS®, a drug that treats dry eyes. The aim of the deal was to derail what is known as the Inter



Partes Review before the U.S. Patent Trial and Appeal Board.

According to the petition, "As this court has recognized, the purpose of sovereign immunity is to safeguard 'the dignity of sovereign entities' which is lost regardless of the outcome of administrative adjudications brought by private parties."

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# IDFC BANK GC SANTOSH PARAB JOINS ALTICO CAPITAL

Santosh B. Parab, General Counsel and Head Legal, IDFC Bank Limited, has recently joined Altico Capital India Limited, a real estate-focused non-banking financial company, as its General Counsel.

Santosh is a Post Graduate in law. His distinguished legal career includes over 22 years of rich and varied experience in structuring of legal transactions coupled with handling complex and contentious issues in the banking and finance sector, with specialization in Infrastructure Financing, Capital Markets & Treasury, M&As, Private Equity, and Dispute Resolution.

Santosh has worked with IDBI for 5 years before joining IDFC. During his tenure at IDFC Bank as General Counsel & Head Legal, he has been involved in dealing with legal and other issues arising out of documentation relating to financing of various infrastructure project financed by IDFC. In addition to project financing, he has also worked on documents for bidding of projects, setting up third-party funds, investment, and acquisition documents.

Altico Capital is primarily engaged in granting advances and loans to real estate developers in India. Based out



of Mumbai, the Company is registered with the Reserve Bank of India as a systemically important non-depositaccepting non-banking financial company ("NBFC"). Altico Capital focuses on senior secured lending to mid-income residential and commercial real estate projects across Tier-1 cities in India, which includes Mumbai, National Capital Region (NCR), Chennai, Bengaluru, Pune, and Hyderabad. The Company also focuses on providing structured finance solutions to the Infrastructure and other adjacent sectors.

# CAIRN GC NITIN BANERJEE JOINS VEDANTA LIMITED



With over 20 years of experience in the legal fold, Nitin Banerjee, General Counsel, Cairn Oil & Gas (the oil and gas vertical of Vedanta Ltd), recently joined Vedanta Limited as its Group General Counsel, a post which was vacant since the exit of Mukesh Bhavnani. However, until the addition of a successor at Cairn, he will also head

the legal function at Cairn. At Vedanta Ltd, Nitin will be reporting to the heads of Vedanta's 12 businesses in India. Nitin had in November 2017 joined Cairn as its GC, where he was responsible for the legal and compliance affairs of this major industry. At that time, Vedanta had stated that "Nitin will be a member of Cairn Business Executive Committee (EXCO) and will help drive the company's vision to contribute to 50% of India's crude oil & gas production. He will also be an integral member of the Group Legal Council and play a key role in driving the overall legal vision and charter for the legal function across the group."

An international corporate commercial lawyer, Nitin is qualified both in India and the UK. He brings considerable skill in energy and infrastructure projects, M&A in the oil and gas sector, commercial and regulatory company law, as well as litigation and arbitration management, corporate governance, and policy in the up, down, and mid-stream oil and gas industry. He was also involved in the Vedanta Group Legal Counsel team. During his tenure at Cairn, the company had expanded and opened new facilities in India and South Africa and increased its portfolio of energy offerings.

Nitin had joined Cairn from Vodafone India, where he worked as Senior Vice President, Legal Transactions, from April 2016 to October 2017. In that role, he headed the legal operations for Vodafone's Enterprise Business, Technology, IT and Networks, Strategy, and Wholesale Mobility businesses.

Prior to joining Vodafone, from April 2013 to February 2016, he was Vice President - Legal & Governance at BG India (BG Group); from August 2012 to February 2013, he served as Partner at J. Sagar Associates; June 2010 to July 2012, he was Head of Legal at BG Tanzania (BG Group); from March 2008 to May 2010, he was Lead Counsel of AMEA Region at BG Group; from January 2005 to February 2008, he was Deputy Legal Counsel at BG India (BG Group); from May 2002 to December 2004, he served as Senior Associate at Trilegal; and from May 1998 to April 2002, he was Associate at PricewaterhouseCoopers.

# WHITE & CASE PARTNER DIPEN SABHARWAL APPOINTED **OUEEN'S COUNSEL**

On January 10, 2019, White & Case Partner Dipen Sabharwal was appointed Queen's Counsel by Her Majesty The Queen on the advise of the Lord Chancellor, David Gauke MP, following consideration by the independent Queen's Counsel Selection Panel.

A total of 108 new appointments were made as Queen's Counsel. Among the 108 appointments are: 30 women applicants of the 55 who applied; 13 applicants who declared an ethnic origin other than white of the 30 who applied; 19 applicants aged over 50 were appointed; Four solicitor advocates of the five who applied.

In this regard, Sir Alex Allan, Chair of the Selection Panel, said, "I am delighted at the announcement of the new silks. I congratulate each one of them. The selection process is a rigorous and demanding one. We collect confidential assessments from judges, fellow advocates, and professional clients, who give freely of their time to provide evidence about an applicant's demonstration of the competencies. Some applicants are filtered out following consideration of the assessments. The remaining applicants are interviewed by two members of the Selection Panel, following which the whole Panel discuss all the evidence on each interviewed applicant."



Sir Alex added, "We remain concerned that the number of female applicants remains comparatively low, but I am pleased that of those women who did apply, well over 50% were successful. I was also pleased to note that the number of BAME applicants appointed was in proportion to their representation amongst applicants, and amongst the relevant cohort of the profession." Sir Alex concluded, "Each year, the Panel has the difficult task of identifying the truly excellent advocates. I am confident that those appointed today truly deserve to be Queen's Counsel."

Read more: http://www.legaleraonline.com/deal-street/white-casepartner-dipen-sabharwal-appointed-queens-counsel

# MZM PARTNER WASEEM PANGARKAR PROMOTED TO SENIOR **PARTNER**



Previously, as a Partner at MZM Legal, Waseem's practice predominantly revolved around matters pertaining to white-collar criminal defense, alternative dispute resolution, criminal and civil litigation, intellectual property rights, and matrimonial disputes. He regularly appears before various courts in Mumbai, including the High Court, City Civil Court, Sessions Court, and Magistrates Court.

Having been an integral part of the firm for years, Waseem has been in-charge of complex cases of fraud, debt recovery, and consumer disputes. Extensive planning and strategizing in matters related to large corporations and high net-worth individuals, cases of medical negligence, real estate issues, securities, and capital markets are part of his repertoire of practice areas.

On behalf of MZM Legal, Waseem frequently takes care of arbitrations at the BSE (Bombay Stock Exchange) and NSE (National Stock Exchange). He is also experienced with undertaking litigation for capital market disputes before forums such as the Securities Appellate Tribunal and SEBI's (Securities and Exchange Board of India) Special Criminal Courts.

Waseem is also an expert on Intellectual Property Law and has experience representing and guiding multinational companies, high net-worth individuals, banks, and financial organizations in areas such as trademarks, patents, domain names, copyrights, and designs.

## AZB COUNSEL KUNAL KUMBHAT PROMOTED TO PARTNER

Kunal Kumbhat, Counsel at AZB & Partners, has in January 2019 been promoted to a Partner at the firm. His practice areas include Mergers & Acquisitions, Joint Ventures, General Corporate, Pharmaceuticals & Biotechnology, and Private Equity. Kunal had joined AZB & Partners in July 2018. Prior to that, from June 2018 to July 2018, he served as a Legal Advisor. Before that, he served at Trilegal as Counsel (April 2015 – May 2018) and as Senior Associate (April 2012 - March 2015). Prior to joining Trilegal, he was Associate at Allen & Overy from September 2007 to March 2012. Kunal pursued LL.M., Corporate and Commercial Laws, from the London School of Economics and Political Science, and B.Sc. LL.B. (Hons.) from National Law University, Jodhpur.



# SAM, AZB REPRESENT FRACTAL ANALYTICS, APAX FUNDS IN \$200M **INVESTMENT DEAL**



Funds advised by Apax Partners (the "Apax Funds") had on January 16 announced a definitive agreement to invest USD 200m for a significant minority stake in Fractal Analytics, a global provider of AI to Fortune 500 clients. The transaction, which consists of a secondary stake acquired from existing shareholders and a primary investment into the business, is expected to close by February 2019. The investment will accelerate Fractal's path to a \$1 billion-revenue company in the AI space. Fractal will use the investment by the Apax Funds to accelerate growth, both organically and through M&A, and to invest further in AI products and research.

Srikanth Velamakanni, Co-founder, Group Chief Executive and Executive Vice-Chairman of Fractal Analytics, said in a Press Release, "We are making progress on our goal to build a \$1 billion-revenue company in the AI space thanks to our relentless focus on serving Fortune 500 companies globally in enabling an AI-led digital transformation in their businesses. We have been fortunate to have the backing of supportive investors in Khazanah Nasional, TA Associates, and Gulu Mirchandani in this journey. We are excited about our new partnership with Apax Partners, who have an enviable track record of building scaled new-age tech services companies."

Pranay Agrawal, Co-founder and CEO of Fractal Analytics, said in the Release, "The demand for AI is surging across the enterprise. Our AI solutions and globally-recognized team of experts empower these organizations to realize and maximize their full potential. The investment from the Apax Funds will accelerate our ability to scale and meet this rising demand globally. It also establishes Fractal Analytics as one of the world's most well-funded AI providers."

Rohan Haldea, Partner at Apax Partners, said in the Release: "The data and analytics sector is attractive and growing rapidly as companies increasingly see it as a core strategic function of their business. We are delighted to partner with Fractal Analytics who are extremely well-regarded in this space due to their cutting-edge advanced analytics and AI capabilities which help their blue-chip client base solve complex problems. Srikanth and Pranay have done an excellent job building a differentiated company with a clear vision. We look forward to working with them to scale the business further." Shashank Singh, Partner at Apax Partners, said in the Release: "We are keen to partner with successful companies, like Fractal Analytics, that have become global leaders. Fractal's strong culture, which fosters employee engagement and innovation, has played a significant role in driving its success. Notably, its ability to attract highquality data science and engineering talent has allowed the company to stay at the forefront of the rapidly-evolving analytics space."

### Law Firms Involved:

Fractal Analytics was represented by Shardul Amarchand Mangaldas & Co (SAM). The team included SAM's private equity team of Partner Abhishek Guha, Principal Associates Ankit Kejriwal and Anwesha Haldar, and Associates Keegan Pavrey and Neekesh Shetty.

Read more: http://www.legaleraonline.com/news/sam-azb-representfractal-analytics-apax-funds-in-200m-investment-deal

# SAM, JSA ADVISE BLACKSTONE, INDIABULLS REAL ESTATE IN STAKE SALE FOR ₹464 CRORE

Indiabulls Real Estate (India's third largest real estate company) recently sold 50% stake in two office assets in Gurugram to Blackstone (a multinational private equity, alternative asset management, and financial services firm) at an enterprise value of approximately ₹464 crore.

Earlier, in November 2018, the company had announced the signing of a non-binding term sheet to divest 50% stake in these two assets having nearly 8 lakh sq ft leasable area.

Indiabulls Real Estate stated that it has "entered into definitive transaction document(s) with entities controlled by The Blackstone Group L.P... to divest up to 50% stake in two office assets in Udyog Vihar, Gurugram..., at an aggregate enterprise value of approximately ₹464 crore".

### **Law Firms Involved:**

Blackstone was represented by Shardul Amarchand Mangaldas & Co (SAM). The team included Partners Mithun V Thanks and Anuj Bhasme, Principal Associate Neety Thakkar, Senior Associate Gaurav Dugar, as well as Associates Avichal Mathur, Nirav Punjani, Rutvi Shrimankar,



and Harshavardhan Sunder. Real estate aspects were handled by Partner Ashoo Gupta and Principal Associate Daryush Marfatia. Competition law aspects were managed by Partner Shweta Shroff Chopra and Senior Associate Supritha Prodaturi.

Indiabulls Real Estate was advised by J. Sagar Associates (JSA). The team included Partner Lalit Kumar, Principal Associate Bharat Bhushan Sharma, and Associate Amandeep Singh Virk.

# SAM, TRILEGAL, AZB ADVISE BYJU'S, NASPERS, CPPIB IN \$540 MILLION FUNDRAISING

BYJU'S, a Bangalore-based educational technology and online tutoring firm, recently raised \$540 million in funding, led by Naspers, a broad-based multinational internet and media group, with a significant portion also being contributed by the Canada Pension Plan Investment Board (CPPIB).

A Press Release issued by Naspers stated, "Naspers leads US \$540 million investment in BYJU'S, one of the world's largest edtech companies. New funds will fuel international expansion and further personalize learning."

The Release added, "The investment will drive the BYJU'S team to further innovate, explore, and set new benchmarks for tech-enabled learning products. The company has plans for international market expansion and will make bold investments in technology that will help to further personalize learning for students."

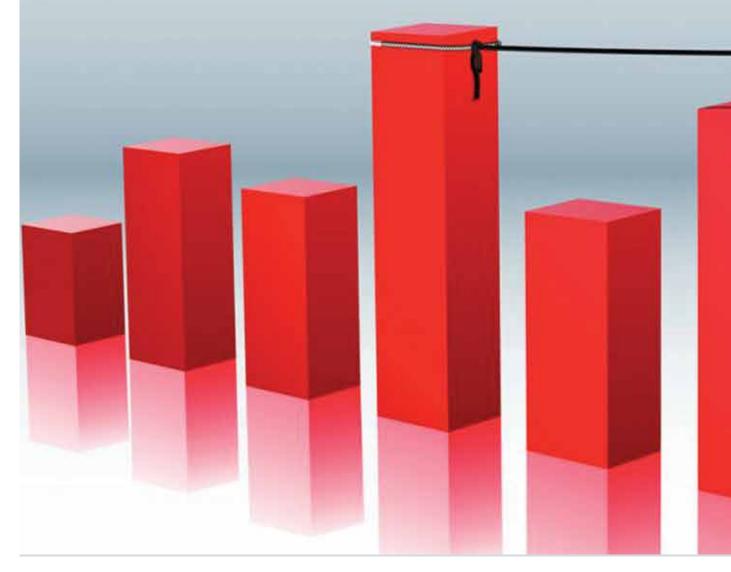
Byju Raveendran, Founder & CEO of BYJU'S, said, "We are happy to have prominent and long-term partners like Naspers and CPPIB on board with us. This partnership will strengthen our ability to deliver on our vision to build the world's largest education company. India has the largest population attending primary school in the world and Indian households are willing to invest a lot in their children's education because a good education is viewed as the best path to success. I believe the importance of quality education amongst the entire population in India fueled our ability to create an engaging and highimpact learning app." He further added, "While nearterm profitability is important for us, as a company, our main focus continues to be on long-term sustainable growth. The edtech industry is undergoing massive shifts; students today want to learn through engaging and interactive methods. We are pioneering 'better learning for tomorrow' with technology as an enabler and we have been working towards making students active learners. It is only through active learning that we can prepare our youth for jobs of tomorrow."

Russell Dreisenstock, Head of International Investments, Naspers Ventures, said, "Naspers partners with highpotential companies that are tackling big societal needs like education, which represents a significant sector ripe for disruption across the globe."

Read more: http://www.legaleraonline.com/news/sam-trilegal-azbadvice-byjus-naspers-cppib-in-540-million-fundraising

# UNDERSTANDING POTENTIAL RISKS FOR NOMINEE DIRECTORS IN INDIA

Such directors should consider adopting adequate measures to safeguard the interests of private equity investors and avoid any undue liability on themselves



uoyed by a vibrant economy and high returns, the private equity (PE) and venture capital space in India was on a rising track to record an all-time high investment of more than \$33 billion in 2018. With an over 35% year-on-year increase, it remained a landmark year for the sector.

Whether the foreign investor interest and PE investment tally of 2019 would outdo the highs of 2018 would not only depend on factors such as global economic trends, outcome of the upcoming national elections, but also on the increasing scope of liability and stringent national and international regulatory pressure imposed by various government authorities and international organizations.

### **Protecting Investments Through** Affirmative Rights – 'Controlling Dilemma' For Nominee Directors

For any PE investor, appointment of nominee director(s) on the board of the investee company remains one of the paramount ways of participating in the management and governance of such companies. For protecting the investment made, certain key matters pertaining to the operations of a company are listed down as affirmative vote matters in the contractual arrangements, the passing or approval of which remains conditional to receipt of affirmative vote from such nominee director. However, such an appointment also exposes the nominee directors to risks and poses several challenges.



The aspect of exercising 'indirect control', notably in respect of the power to determine the outcomes of a board meeting or shareholders meeting, has been discussed at vast length in various judicial precedents. Taking reference from the case of Century Tokyo Leasing Corporation/Tata Capital Financial Services Limited, the Competition Commission of India had held that affirmative rights relating to certain items would be considered 'control' for the purposes of the Companies Act, 2013 ("Companies Act"). These items include annual budget; annual business plan; exit and entry into lines of business; appointment of management and determination of their remuneration; or strategic business decisions.



**Tushar Ajinkya**Partner
Economic Laws
Practice





Chirag Jain Associate Economic Laws Practice

However, a different view with respect to associating of veto rights to exercising of control has been taken in various cases, like in the case of *Subhkam Ventures India Private Ltd. v. SEBI*, where it was held that veto rights in favor of certain shareholders to veto certain actions proposed to be undertaken by the company (affirmative voting rights in the shareholders agreements) does not amount to 'control' and that the shareholders having such affirmative rights need not make an open offer under the Takeover Regulations to the other public shareholders of the target company.

Therefore, test of degree of control that veto right/affirmative right is able to grant to an investor is examined on the basis of facts and circumstances of each case. An indicative list

of reserved matters has been provided in various judicial precedents and the test used to determine whether a particular matter falls within the protective or participative arena or is allowing a nominee non-executive director to exercise control, is based on whether the investor is in a position to influence major policy decisions of the investee company or not.

# Potential Liability Under Various Laws In India

- The duties of directors as codified under Section 166
  of the Companies Act, 2013 do not distinguish between
  an executive and a non-executive director. And hence
  obligates a non-executive director almost on an equal
  footing as that of an executive director.
- 2. The term "officer in default" applies only to executive directors under the Companies Act, independent and non-executive directors (including nominee directors) can be held liable under Section 149(12) of the Act if acts or omissions by the investee company:
  - (i) occur with the knowledge of such independent and non-executive directors, "attributable through board processes", and with the consent or connivance of such independent and non-executive directors; or
  - (ii) where such independent and non-executive directors have "not acted diligently".

The affirmative voting rights provided to investor nominee directors under the provisions of an investment agreement and articles of association of an investee company can lead to a situation where non-executive directors would remain equally duty bound under Section 166 of the Companies Act, 2013 while protecting the interests of the PE investor. It can be further argued that though a non-executive director, who is not involved in everyday operations of the investee company, can face a potential risk where upon grant of affirmative voting rights, knowledge can be attributed through board processes and lack of diligence is seen to be exercised in the decision-making process.

- 3. Any non-diligent exercise of veto made available to the nominee director can lead to significant consequences, including facing of liabilities and serious implications for non-compliance, such as penalties, forfeiture and in certain cases, even arrest arising under various laws in India. Availability of such right and access to the information required in the process of decision-making to exercise such veto right may also negate defences otherwise available to nominee directors against noncompliance by investee company, they sit on the board of. In other words, the fact that a nominee director may not have any information or resources to be able to understand the business decisions, might not be enough to absolve him of the duties to understand the investee company's affairs and to apply his/her own mind to determine whether a particular transaction was in the investee company's interests.
- 4. PE investors also secure certain information rights under the investment agreements which binds an investee company to provide such investors with company-related information including financial statements, operations and management periodically. Most information rights also include the opportunity to visit the company's facilities, inspect the company's books and records, and discuss matters with company officers. As a practical matter, an investee company while adhering to such provisions, shares or is made to share all such information with the nominee director himself. These rights bring in another layer of obligation on nominee directors to remain diligent while examining the information/documents and taking into consideration such information while discharging duties as a director including exercising of veto rights, and any failure in exercising utmost diligence in reviewing the information can further outcast the shadow of liabilities under various laws in India.
- 5. Further with respect to other applicable laws, while it is difficult to provide any standard that would determine

an individual's exposure to liability, it has generally been seen that 'only those persons are held liable for wrongdoing committed by a company, who were in charge of, and responsible for, the conduct of the business of the company at the time of commission of an offense'. Such liability may not always be foreseeable, and actions such as the violation of environment protection laws, dishonoring checks, offenses under the Income Tax Act of 1961 or Goods and Services Tax Act, 2016, violation of foreign exchange regulations, breach of securities regulations, non-payment of provident fund contributions, violation of the Shops and Establishments Act, or food adulteration, could result in liability that may not always be limited to the executive directors.

### Conclusion

Securing affirmative voting and information rights in an investment agreement can be a double-edged sword for PE investors. Though it favorably provides an edge while securing the investment by guiding the operations in the desired manner, any inaccuracies in exercising such rights can also lead to risk of facing allegations and being charged for potential liabilities under various laws in India.

Increasing reliance on utilization of forensic auditing and investigation techniques combined with advanced data analytics has helped various companies and their investors in resolving unwarranted disputes in courts of law and other forums in India. Forensic techniques such as data analytics can be very useful in detecting, monitoring or investigating potentially improper transactions, events or patterns of behavior related to misconduct, fraud and noncompliance issues. By way of illustration, a Forensic Audit is a comprehensive and systematic process involving a series of activities and tasks undertaken for establishing the accuracy and authenticity of the transactions under review. Increasing reliance on conduct of forensic investigation coupled with legal health review, has helped various global private equity investors in collecting and preserving evidence, conducting interviews and preparing strategies for pursuing civil and criminal remedies while maintaining legal privilege.

In order to avoid and mitigate any liability on the nominee directors arising out of a non-compliance or breach by the investee company under various laws in India and any other legislation enacted outside India having an impact on conducting business in India, such directors should consider adopting adequate measures to safeguard the interests of private equity investors and avoid any undue liability on themselves.



# THE TWO FACES OF JUDICIAL ACTIVISM

— Ambuja Cement Corporate Legal Team



### Introduction

We live in a democratic society where the Legislature, Executive, Judiciary and Media are considered the four "pillars" of our society. Each pillar has a significant role to play within its domain. Legislature is responsible for making laws; Executive is responsible for implementing the laws; Judiciary is responsible for administration of justice by ensuring that these laws are implemented in the right perspective and Media is responsible for ensuring transparency in the working of the other three pillars of our society.

Though the roles and responsibilities of each pillar appear to be well-defined, there are instances of interference or encroachment in other's territories, either

due to ignorance or due to anxiety of claiming superiority over the others. While in the former case, the interference is not as serious, in the latter case, a situation of show-down is imperative at one stage or the other. The outcome of such situations is not always very pleasing and healthy for the overall health of democracy where each pillar is supposed to respect the others' responsibilities and work within its own defined territory.

This is more so the case of a country like India where each pillar is considered equally important and powerful unlike some other countries where either the Judiciary is more powerful or the Legislature dominates the others. The Constitution of India envisages separation of power among the various organs of the government and therefore does not offer supremacy to any one pillar, rather the Constitution itself assumes supremacy over all others. The lawmakers make laws within the framework of the Constitution and Judiciary is mandated by the Constitution to scrutinize the acts of the Legislature and the Executive and

prevent them from overstepping the boundaries set by the Constitution. Hence, the Judiciary acts like a guardian in protecting the fundamental rights of the people from infringement by any organ of the state.

## Role of the Judiciary

The Judiciary is the system of courts that interprets and applies law in the name of the state and also provides a mechanism for the resolution of disputes. Under the doctrine of separation of powers, the Judiciary generally does not make statutory law (which is the responsibility of the Legislature) or enforce law (which is the domain of the Executive), but rather interprets law and applies it to the facts of each case. However, the judiciary does make common law, setting precedent for other courts to follow.

In many jurisdictions, the judicial branch has the power to modify laws through the process of judicial review. Courts with the power of judicial review may annul the laws and rules of the state when it finds them incompatible with any primary legislation, provisions of the constitution or international law, etc.

### **Iudicial Activism**

human rights,

environmental

protection, etc.,

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judicial activism

becoming

overreach on more

than one occasion

In layman terms, judicial activism means interference by the Judiciary in the Legislative and Executive spheres with a view to further the ends of justice, especially for the weak and disadvantaged sections of society.

> It involves the Supreme Court (SC) and high courts donning the hat of activism and compelling other organs to perform their functions. The reason for prompting the courts to indulge in judicial activism, by stepping, in is to ensure that Executive inaction does not result in the Legislature's laws being improperly implemented or worse, not being implemented at all.

> To put forth some notable examples of judicial activism, the Supreme Court, by devising the doctrine of basic structure in the Keshavananda Bharati case acted as a guarantor of the Constitution and by bringing Article 356 of the Constitution (President's Rule) under judicial review in the case of S.R. Bommai, emerged as the protector of federalism.

> However, there are instances when even the best intentions backfired. For instance, the Judiciary, in an attempt to strengthen fundamental rights, institutionalized the process for public interest litigations (PILs). However, it has been noticed that while PILs are an effective tool to resolve issues pertaining to the environment, human

rights, etc., there are several occasions when frivolous litigations are filed in disguise as PILs. This tool is also employed as a facade by corporates to exercise

Some other such examples of judicial activism misfiring or overstepping its domain include the SC directing the Centre to conduct a common entrance exam for admission to medical courses in violation of the doctrine of separation of powers, banning diesel cabs in Delhi leading to widespread public protests, making it compulsory to play the national anthem in theaters, ordering cuts in movies, thereby taking on the role of the censor board and many more.

Though judicial activism has served many noteworthy purposes in the field of

In July 2017, a two judge bench of the SC, while dealing with an issue arising out of Section 498A of the Indian Penal Code, had observed that a large number of false cases were filed under Section 498A alleging harassment of married woman due to which their husbands and their family members suffer for years. Consequently, the bench issued certain guidelines to regulate investigation, arrests, etc. in such family disputes. However, within three months of this judgment, a three judge bench of the SC observed that it was not in agreement with the earlier judgment as the formulation of guidelines fell in the legislative sphere and as such indicated that it would revisit the earlier verdict which reduced the severity of the anti-dowry law.

The above observation of the three judge bench of the SC is another instance where the SC has attempted to venture into the legislative territory by re-writing laws which fall in the legislative domain. Such instances have attracted criticism from all directions, particularly, the Legislature, which felt that the courts have been exceeding their authority in interpreting laws by becoming an extra-constitutional law making body.

### Conclusion

Though judicial activism has served many noteworthy purposes in the field of human rights, environmental protection, etc., there have also been instances of judicial activism becoming overreach on more than one occasion. This fact is acknowledged even by the Supreme Court as it had observed on several occasions that judges must know their limits and not try to run the government. There is a broad separation of powers under the Constitution and each organ/pillar must have respect for the others and not



encroach into others' domain for a smooth functioning of the democracy. If all pillars of our democratic society, including the Judiciary, manage to strike a fine balance, there will be no needless confrontations among the four pillars of our society, no abuse of the concept of judicial activism, and the dispensation of justice, in the true perspective, will be a reality.



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



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# BJARNE P. TELLMANN

General Counsel, Chief Legal Officer and Member of Executive of Pearson

eader, lawyer, writer, public speaker, Karate black belt, actor... BJARNE P. TELLMANN is indeed a man of multiple talents... Currently, BJARNE leads a 170-strong pack across functions and continents, as Chief Legal Officer and General Counsel of Pearson and Member of its Executive Team, even as he continues to pursue his other passions.

### **Wonder Years**

Born to a Norwegian diplomat father and a New York-based teacher mother, BJARNE spent his growing up years in Paris, Cairo, New York and Oslo, and had the good fortune of living and working all over the world. Not surprisingly, he is fluent in five languages, including English, German, Norwegian, Swedish and Danish.

BJARNE boasts glowing academic credentials: an Advanced

Management Program (AMP) from Harvard Business School; J.D. (with Honors) from The University of Chicago School; M.Sc. (Econ.), International Relations, from The London School of Economics; B.A. (Summa cum Laude), Political Science, from Boston University; and Post Graduate Diploma (with merit), European

Have a plan (set measurable and achievable goals, and work backwards towards them); nurture chance encounters (some of the best things that happen are unanticipated); and prioritize what's truly important (live your eulogy, not your CV)

Competition Law, from King's College, University of London; among others.

BJARNE started out, rather unconventionally, as a professional actor, landing plum roles in a couple of Norwegian films and a Swedish television show to boot. Eventually though, he opted for a career in law, beginning his professional journey as an Associate Attorney in the New York office of White & Case LLP.

### Career Graph

BJARNE experienced, first-hand, the firm's global reach when he was sent to its Stockholm office on what was supposed to be a six-week assignment, working on the restructuring of The Coca-Cola Company's Scandinavian bottling operations. Little did BJARNE imagine that the "brief" task would balloon into over 20 years in various roles across the world with multiple organizations, before he would return to New York.

Somewhere around this time, **BJARNE** also married his German/Dutch girlfriend, planning to settle down in Germany only to join the Frankfurt office of Sullivan & Cromwell LLC as he realized that White & Case LLP did not have a German office. The highpoint of this stint came when he represented Switzerland and Swisscom AG in connection with the company's US\$5.5 billion initial global public offering, the eighth largest IPO in history at the time.

It dawned upon BJARNE however that he craved the commercial exposure and variety an in-house career would afford, and subsequently, he joined Kimberly-Clark (Europe), Ltd. as International Attorney at its Greater London, Europe, Africa & Middle East, office. One year into his role, BJARNE was offered the position of Deputy General Counsel at Coca-Cola HBC, AG (CCHBC), a publicly-listed major bottling

> group with operations across 28 countries spanning Russia, Eurasia, Europe and Africa; approximately 36,000 employees; and net sales revenues of EUR 6.5bn. Too good an opportunity to refuse, BJARNE soon found himself living and working across the globe, taking on the entire gamut of legal responsibilities

involved. One of his biggest projects was leading the legal function to list the company on the New York Stock

Soon enough, BJARNE was offered another critical role i.e. General Counsel Japan for Coca-Cola (Japan), which he took up instantly as a window to newer opportunities within The Coca-Cola Company. Based in Tokyo, BJARNE got first-hand experience of one of The Coca-Cola Company's most dynamic and profitable markets. Simultaneously, BJARNE also got to serve both as Assistant General Counsel, Bottling Investment Group (BIG), leading over 20 lawyers across China, the Philippines, and Singapore/Malaysia, and handling competition law/antitrust matters globally; and Director on the Board of Coca-Cola West Company, Ltd., an independent and publicly-traded bottling company in Japan with 10,000 employees, and revenues of approximately \$4.6 billion. The experience taught BJARNE to look at issues

### **FEATURE**

from the perspective of a Board member rather than just a lawyer.

While in Tokyo, BJARNE also served briefly as General Counsel, Asia-Pacific Group, at The Coca-Cola Company, reporting functionally to The Coca-Cola Company's General Counsel and operationally to the President, Asia-Pacific Group.

Still with the Coca-Cola Company, BJARNE went on to serve in senior leadership positions such as Associate General Counsel based in Atlanta, where he was responsible for the Bottling Investment Group (BIG), one of the company's three global business units managing all directly-owned manufacturing, distribution, sales and supply chain activities worldwide. At the same time, he also served as a Member of the Supervisory Board of Coca-Cola Erfrischungsgetränke AG, Germany's largest beverage company. The experience afforded insights into how well-managed businesses should be run, including strategy and working effectively with organized labor.

It was four-and-a-half years' ago that BJARNE left The Coca-Cola Company to join Pearson as Chief Legal Officer and General Counsel, and Member of its Executive Team. For BJARNE, Pearson presented a very interesting opportunity as it had transformed itself from a media and publishing conglomerate to a technology-enabled education and learning business, necessitating a lot of energy, imagination and commitment from the legal team. What's more, Pearson had also restructured itself into a vertically integrated business, requiring consolidation and strategy from the legal department. Here was a chance in a million – one that BJARNE could not miss!

### **Achievements**

Under BJARNE's able supervision, Pearson's fixed legal costs have dipped by over 40 per cent through rightsizing of internal to external spend, service delivery optimization, appointment of panels, technology deployment, and talent development. As part of efficiency optimization, a transactions' service center has been rolled out, and efforts are underway to include "special ops" teams of legal professionals which can be deployed as and where needed. TM and patent strategies for Pearson's new brand architecture and digital strategy are being designed and implemented. Signature programs like "Ethos" have been introduced to promote innovation, culture and diversity. In a first, Pearson, in collaboration with the National Federation of the Blind, has launched a unique mentoring program for disabled lawyers christened "Changing the Channel" which helps them build the confidence and strategic focus needed to succeed. So far, the program has had a demonstrable impact on both mentors and those being mentored.

### Hall Of Fame

BJARNE's rather long and illustrious career spanning more than two decades has been peppered with accolades, including "General Counsel of the Year" at the Legal Era Global Achievers' Awards, 2018, in New York; "Lifetime Achievement Award" at the Legal 500 Awards, 2018, in London; "General Counsel of the Year" at the British Legal Awards, 2017, in London; "Legends in Law" at the Burton Awards, 2016, in Washington DC; "UK GC Power List" in 2016; and "The Lawyer Hot 100" at the Lawyer Magazine Awards, 2015, in London.

A Fellow of the American Bar Foundation, and Member of the GC 100, GC 50, American Bar Association, and Association of Corporate Counsel; BJARNE serves on the Boards of prestigious institutions such as The University of Chicago Alumni Board, Chicago; The University of Chicago Law School Council, Chicago; and Modern Legal Practice, London.

### **Interests Galore**

Among other highbrow pursuits, BJARNE has authored several books, including the critically acclaimed Building an Outstanding Legal Team: Battle-Tested Strategies from a General Counsel (Globe Law and Business, 2017), of which, The Times noted, "The book astutely captures the mood of today's legal market. It is a combination of vision and pragmatism that leaves the impression that the most formidable competitors to law firms may soon be in-house legal departments."

BJARNE is a prolific writer and publishes regularly in legal journals and periodicals on legal technology, culture and practice management. Some of his more recent articles comment on the rise of the legal "special ops" team, making AI a reality and so on. BJARNE also regularly participates as public speaker at major corporations, law firms and universities across USA, Europe and Asia.

### Guruspeak

Ask BJARNE what his advise to young lawyers would be, and the KRAV MAGA (Advanced Level) Instructor belts out bullet points with the speed of a Shaman:

- Have a plan (set measurable and achievable goals, and work backwards towards them);
- Nurture chance encounters (some of the best things that happen are unanticipated); and
- Prioritize what's truly important (live your eulogy, not your CV)

After a brief pause, he prescribes two great reads: "How Will You Measure Your Life?" by Clayton Christensen, and "The Road to Character" by David Brooks...





### THE BAR ASSOCIATION OF INDIA

### 1st LAWASIA Human Rights Conference

New Delhi | 9<sup>th</sup> & 10<sup>th</sup> February 2019 The Hyatt Regency Hotel, New Delhi

The Bar Association of India (BAI) is pleased to announce that it will be hosting the 1<sup>st</sup> LAWASIA Human Rights Conference at New Delhi on 9<sup>th</sup> and 10<sup>th</sup> February 2019. The conference venue is the Hyatt Regency Hotel, New Delhi.

Spread across eight (8) sessions, various topics ranging from "Gender, Sexuality and Human Rights" to "Conflicts and Cross Border Migrations" will be discussed by panels consisting of eminent members of the legal profession.

The Conference will be inaugurated by the Hon'ble Vice-President of India, Shri M. Venkaiah Naidu. Judges of the Supreme Court of India, Justice Dr. A. K. Sikri, Justice Dr. D.Y. Chandrachud, Mr. Mukul Rohatgi (former Attorney General), Mr. Gopal Subramanium (former Solicitor General), and Ms. Pinky Anand (Additional Solicitor General) will be sharing the stage with several practitioners and academics from around the world. These would include amongst others Mr. M. Akram Sheikh (Pakistan), Mr. Essen Lee (Taiwan), Ms. Lizzette Robleto de Howarth (United Kingdom), Ms. Po Wing Kay (Hong Kong), Prof. Christopher E. Stone (Columbia Law) and Prof. Yasushi Higashizawa (Meiji Gakuin University, Tokyo).

We hope to see you at the Conference.

For details and registration: http://lawasiabaihumanrightsconference.in/registration.html

For queries: baioffice1959@gmail.com

# DOING BUSINESS IN CAMBODIA

# INDIAN PERSPECTIVE

### I. Introduction

Indian investment in Cambodia, Laos, Myanmar and Vietnam ("CLMV") was US\$131.5 million in 2017-18 and India's total trade with CLMV countries grew from US\$3.4 billion in 2008 to US\$ 14.5 billion in 2017. Southeast Asia is one of the world's most promising regions and the CLMV nations are especially gaining growing interest. Among CLMV, Cambodia is developing as a major hub and invites some comparisons to Singapore for its liberal policies on taxation and foreign ownership.

Cambodia is actively promoting foreign investment and offering numerous incentives and tax considerations to qualified investors. The country's GDP is expected to grow at a rate of 7.3% for 2018. The expected GDP growth is spurred by development in various sectors, including the newly emerging sectors of retail, technology, e-commerce, and large scale infrastructure projects. The country's strategic location in the heart of ASEAN between Vietnam. Thailand and Laos along with a coastline providing easy regional accessibility makes it an attractive investment destination. Treating foreign investors and local investors equally provides access to ASEAN's 600 million strong consumer market. In this article, we have briefly elaborated the key sectors for investment and highlighted the process for formation of companies and related tax incentives.



Sujeet Karkala

Legal Advisor

Sciaroni & Associate

Joseph Lovell

Managing Partner

of a limited liability company, branch office, representative office, partnership; and sole proprietorship.

III. Investment Incentives Granted to a Qualified Investment Project ("QIP")

registered entities. Registration of such entities must be done with the Ministry

of Commerce ("MoC") and General

Department of Taxation ("GDT"). Under

Cambodian law, commercial entities can

be established and operated in the forms

To facilitate formation of commercial entities intending to do business on a bigger scope of operation and investment capital, those entities can be established in the form of QIPs. A QIP needs to be approved by the Council for the Development of Cambodia ("CDC"), which is a one-stop service for establishing the company as an incentive company and is exempted from profit tax up to a total period of 9 years or eligible for a special depreciation method at the rate of 40% as an allowance on the value of tangible properties used in production or processing. Moreover, a QIP is exempt from VAT, duty free imports which also includes exemption of imports for production equipment, construction materials, as prescribed by the ministry.

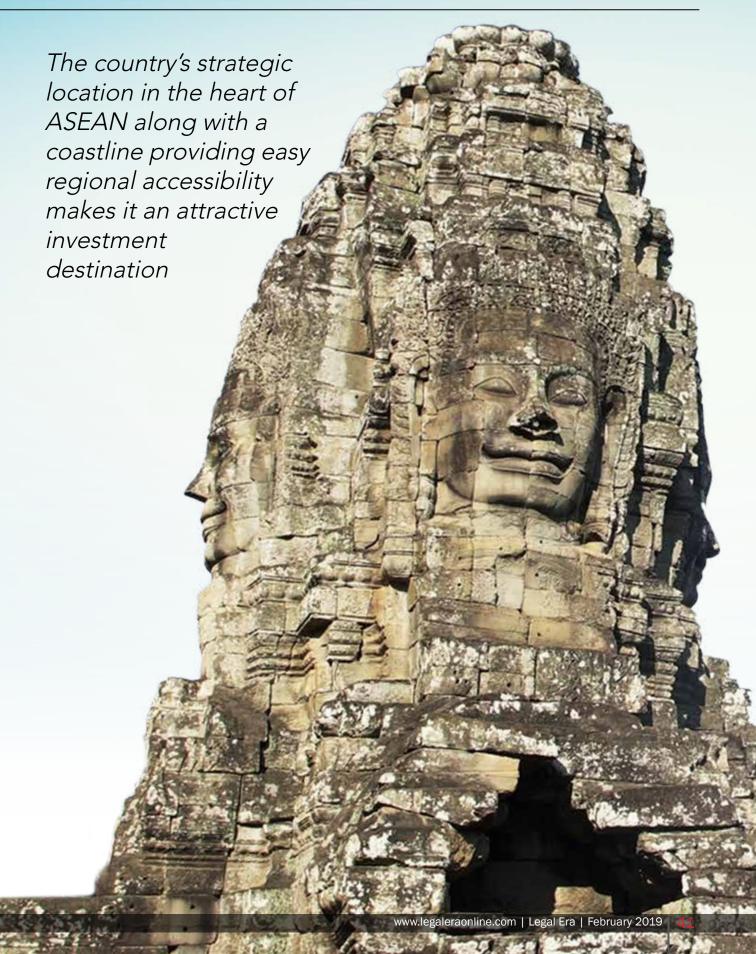
# IV. Special Economic Zone ("SEZ")

Cambodia has promoted the SEZ concept and the regulation was introduced in December 2005 by "Sub-Decree No.147

on the Organization and Functioning of the CDC" issued on 29 December 2005 to restructure the organization of the CDC, where a new branch of ministry called the "Cambodian Special Economic Zone Board (CSEZB)" was established to manage the SEZ scheme. This is governed by "Sub-Decree

### II. Company Formation

In Cambodia, company formation is a requirement in order to establish a commercial entity and a foreigner can enter with 100% foreign ownership or as a Joint Venture with local



No. 148 on the Establishment and Management of the Special Economic Zone" (the SEZ Sub-Decree). Additionally, the "Law on the Special Economic Zones" was drafted by the CDC in 2008 and is now under examination by the RGC.

### V. Tax System in Cambodia

The Law on Taxation (1997, amended 2015) has been followed with various new notifications and circulars amending the law to keep step with development. The Law on Financial Management (2016 effective from January 2017) is more introduced a new tax system in Cambodia termed as "real regime" and classified three categories of taxpayers - small, b) medium, and large.

At present, Cambodia does not have a comprehensive personal income tax that requires individuals to file and pay tax to the GDT. The only applicable tax is corporate tax 20%, Minimum tax 1%, Value Added Tax 10%, Fringe Benefit Tax 20%. For tax on salary, an individual resident in Cambodia is liable for tax on salary on both foreign as well as Cambodian source bases on income slab and the rate of tax applicable is 0% to 20%, while a non-resident person is liable to the 20% tax on salary only on Cambodian source

Withholding tax in general is determined as follows:

- a) Any resident taxpayer carrying on business and who makes any payment in cash or in kind to a resident taxpayer shall withhold, 15% on management, consulting, and similar services and royalties for intangibles and interest in minerals; income from movable and immovable property 10%; interest paid by a domestic bank or savings institutions for fixed term 6% and non-fixed terms 4%.
- b) Any resident tax to a non-resident taxpayer shall withhold 14% on interest, royalties, rent and other income connected with the use of property; compensation for management or technical services and dividends.

Other notable taxes are accommodation tax, specific tax on goods and public lighting tax. So far, there is capital gain tax both long-term and short-term capital gains.

In addition, Cambodia has entered into Double Taxation Avoidance Agreements "DTAA" with Singapore and Thailand (already in effect), China (to be effective from January 1, 2019), Brunei and Vietnam (yet to be in force). Recently, transfer pricing provisions were also adopted for greater conformity with international tax practice.

### VI. Labor Law

In recent years, the Ministry of Labor and Vocational Training (MOLVT) has introduced significant change in terms of labor law including minimum wage requirements for the garment and footwear sector and a mandatory requirement for work permit to foreign workers. It is mandatory for every business enterprise to register with the MOLVT before hiring any employees and workers must have a written employment contract i.e. Fixed Duration Contract ("FDC") & Unspecified Duration Contracts ("UDC").

Under the Cambodian Labor Law, a contract for work to be performed will be defined as a fixed duration contract (FDC) if it contains the exact commencement and termination dates, and that the contract duration, including any renewal period, does not exceed two years. If any of the conditions under FDC are not met, then the contract is defined as unspecified duration (UDC). In case, if any employee worked for an employee for more than 2 years, the contract will automatically be consideration as UDC.

Further, the law introduces National Social Security Fund ("NSSF") as mandatory for every entity that, as of December 2018, covers Work Related Accident and Health Care benefits to employees and also recent regulations regarding Seniority Payment based on the Seniority in the employment.

### VII. Intellectual Property Law

Cambodia's 2004 accession to the World Trade Organization prompted the adoption of several laws regulating intellectual property rights. So far, the country has adopted laws relating to IPR which are Laws concerning marks, trade names, and act of unfair competition; Laws on Patents, Utility Models, and Industrial Design; Law on Copyrights and related rights; Law on Geographical Indication to Trade Marks.

### VIII. Key sectors in Cambodia for doing business

### 1. Banking Sector

The banking sector in Cambodia has had vibrant growth. In Cambodia, banks comprise commercial banks, specialized banks, microfinance institutions, depositing taking microfinance institutions or leasing companies. The National Bank of Cambodia ("NBC") is the authority responsible for approval of banking licenses. There is no restriction on repatriation under The Foreign Exchange Laws, the ease in restriction is to encourage investments.

### 2. Insurance

The Ministry of Economy and Finance ("MEF") is the competent authority supervising and inspecting the insurance business and is empowered to issue licenses, revoke licenses, and control and supervise the insurance industry in Cambodia. Under the law, only insurance companies, agents and brokers are licensed to provide or sell insurance products. So far, there are two main types of insurance offered - life insurance and general insurance.

### 3. Energy Sector

Unlike other countries, there is no restriction on investment in power generation, transmission, and distribution sectors. A foreigner can have 100% ownership, or a joint venture with the local entities / government. China followed by Japan are the major investors in Cambodia's energy sector. Recently, investment in solar energy is on the rise and a large number of countries are looking to invest in solar farm and solar generation because this sector is an untapped market. Companies can obtain the following licenses--Transmission license, Distribution license, Bulk sale

license, Generation license, Dispatch license, Consolidated license, Sub contractor license, and Retail license. Any power plant needs approval for generation, distribution, or transmission and to obtain approval from the MME, EAC, Ministry of Environment, Ministry of Commerce ("MOC"), CDC for investment incentives, and approval from Ministry of Land Management, Urban Planning, and Construction in case of construction is required.

### 4. Real Estate

The 2001 Land Law, the 2007 Civil Code and the 2011 Law on the Implementation of the Civil Code constitute the main framework applicable to real estate transactions. The constitution of Cambodia restricts foreigners owning land in Cambodia. However, foreign ownership in co-owned buildings, can be up to 70 percent of private units in coowned buildings or condominiums, excluding ground and underground floors. The law is applicable to both newly constructed co-owned buildings or existing buildings which are to be converted into co-owned buildings. The laws in Cambodia only allow Cambodian citizens or Cambodian entities to legally own land. A Cambodian entity is defined as a company having 51 percent or more of the voting shares held by Cambodian citizens or Cambodian entities. Therefore, most foreigners and foreign entities own land through a landholding company with local nominee shareholders. Other available ways for investment by foreigners in the real estate sector is by a long-term lease i.e. perpetual lease or entering into a concession agreement from the government in case of government land.

### 5. Securities Market

The Cambodian Stock Exchange (CSX), a joint venture between the government of Cambodia and the Korea Exchange, established in 2011 to access the equity capital markets in Cambodia. Non-government securities issued by public limited companies or other legal entities include equity securities, bonds or debentures, interests in a managed investment scheme, derivative instruments, and government securities including Treasury bills, Treasury bonds, and other instruments creating or acknowledging indebtedness and issued by or on behalf of the government. For doing business in securities relevant to securitiesrelated operators, including the securities market operator, securities depository, clearance and settlement of facility operators, underwriters, dealers, brokers, investment advisors, securities representatives, investment advisory representatives, securities-specialized accounting firms, cash settlement agents, securities registrars, securities transfer agents and paying agents needs to obtain license from Securities Exchange of Cambodia. The securities market is primarily governed by the Law on the Issuance and Trading of Non-Government Securities, dated October 19, 2007 (Securities Law) and its implementing Sub-Decree No. 54, dated April 8, 2009 (Securities Sub-Decree); implementing regulations issued by the SECC; and the Law on Government Securities, dated January 10, 2007 (Government Securities Law).

### 6. E-commerce

E-commerce is relatively undeveloped compared to other jurisdictions. Cambodia is undertaking efforts to introduce a new Law on E-commerce. The e-commerce markets are growing with various challenges related to limited internet infrastructure, delivery system challenges, and minimal credit card use and most transactions in ecommerce are now settled through cash-on-delivery. Cambodians are adopting e-Commerce both as consumers and merchants, and there is a significant untapped market potential in the sector fueled by exploding internet access, high smartphone penetration and a growing middle class. Despite lack of regulations in this market, a number of homegrown startups, increased. The e-commerce market with homegrown service providers like PassApp, Nham24, Pipay etc. is attracting more and more consumers. International service providers like Grab, Alibaba, Amazon are yet to grow to their full potential in Cambodia. Recently, Cambodia and China signed a Memorandum of Understanding E-commerce Cooperation to boost this sector.

### 7. Aviation

Aviation sector investment has been more than \$3 billion in local air transport infrastructure, according to the State Secretariat of Civil Aviation (SSCA). While there are 11 airports in Cambodia, which include 3 international airports in Phnom Penh, Siem Reap and Sihanoukville. India's recent initiation to connect the North east of India with ASEAN would attract investment in this sector. Indian and Cambodia have entered into Bilateral Aviation Agreements, however, it is yet to be airborne between the two countries.

In addition to the above sectors, the other key sectors are garment sectors, hotels, agriculture, tourism, oil and gas exploration, health care, technology, education and others.

### IX. Conclusion

The adoption of the 'Look East' Policy by India in 1992 was an initiative towards developing extensive economic and strategic relations with ASEAN nations. In 2014, India renewed its intentions with the Act East Policy. Further, India's Union Budget for 2015-16 proposed the setting up of a project development fund and tax incentive by establishing a special purpose vehicle (SPV) in order to catalyze investments from the Indian private sector to the region by providing tax incentives. India seeks to benefit from the emerging industrial power of the CLMV countries, by investing in sectors like textiles, pharmaceuticals, tourism, and high-tech agriculture. India has also proposed bilateral trade agreements with each CLMV country for major investments in coal, oil and natural gas followed by metals and financial service. It is expected that India will continue to play a growing role in Cambodia and the CLMV region.



## **LET'S UPHOLD**



# REAL ESTATE Construction Claims & **Speedy Resolutions:**

### Making the Right Choices & Road Ahead

The article discusses the kinds of disputes arising in the construction sector, options for resolution of disputes and hurdles therein and the road ahead in resolving them expeditiously



Shweta Bharti Senior Partner Hammurabi & Solomon

onstruction claims have their own uniqueness since it often requires parties to continue performing their respective obligations creating myriad challenges which make construction disputes uniquely different from other disputes since the repercussion of the disputes may often result in enhancement of the cost of the project as well as delays in project completion.

This article seeks to discuss the kinds of disputes arising in the construction sector, the options for resolution of disputes, and the hurdles therein, and the road ahead resolving such disputes in an expeditious

### Kinds of construction disputes

The key construction disputes are -

- (i) failure of parties in interpretation of contracts and understanding the terms and conditions thereof.
- (ii) breaches arising out of the contract by either party,
- (iii) delays in payments or insufficient payments commensurate performance,

- (iv) drawing and design-related concerns or inadequate/ insufficient design,
- (v) Project Engineer favoring either party, leading to allegations of bias against him.

Even though the contracts are extensively negotiated prior to execution thereof, the issues relating to the interpretation of such negotiated terms and conditions have been seen to be one of the major point of discord between the parties. The reliance is thereafter placed on the discussions prior to the execution of the contract and arrive at an essence/ understanding of such terms and conditions. Similarly, the breaches of contracts result in damages being claimed by the aggrieved party, including the same leading to demand for specific performance of the contract or in certain extreme cases also result in termination of the contract. Though, for most companies, termination is not viewed as the most viable option for the very fact that the entire project after having progressed to a certain stage would have to be reunderstood by a new contractor, which shall not only delay the project but also cause additional cost burden on the owner companies.

### Options of dispute resolution & challenges

There are various mechanisms for resolution of the above stated disputes, viz., hardship-negotiation, mediation, conciliation, arbitration and litigation. There are certain contracts where hybrid mechanism has also been chosen as a way for resolution of disputes wherein a combination of a few mechanisms is adopted in order to arrive at an early and amicable resolution. We have most often witnessed hardship-negotiation (without the assistance of any third-party intervenor) preceding the arbitration clause and have also been successfully in various cases and the parties have been able to negotiate and arrive at a settlement. The other hybrid mechanism implemented is arbitrators successfully donning the role of informal mediators/conciliators prior to initiation of arbitration and making attempts at ensuring successful resolution of disputes.

While the above mechanisms have often paved the way to successfully resolve disputes, it has been noticed that there is no substitute for arbitration and it still remains the preferred form of dispute resolution in the real estate sector. Thus far, preference in arbitrations has been given to ad-hoc arbitrations as compared to institutional arbitrations, there being very few construction-related arbitration institutions besides the Construction Industry Arbitration Council (CIAC), which is working under the aegis of the Construction Industry Development Council (CIDIC). Besides the CIAC, there are few institutions viz. ICA, SIAC etc. as well, providing for institutional arbitration services. In such circumstances, there arises a need for world-class arbitral institutions with techno-legal professionals empaneled as arbitrators in order to bring about a swifter resolution to construction disputes which have various technicalities involved which may not be understood in the right perspective by practicing



lawyers and retired judges. We have also noticed in our past experience that emergency reliefs that have been sought by the parties in construction disputes have largely come through in institutional arbitrations, where the institutions provide for such emergency reliefs while in ad-hoc arbitrations, the prevalent practices and procedures have been given more weightage, thereby delaying the reliefs to a certain extent. With amendments in the Arbitration & Conciliation Act, 1996 (Act), in 2015, followed by another amendment in 2018, there has been a sea change in the manner in which arbitrations have been conducted in the past in India. The timelines provided to conclude the arbitration proceedings have been tightened, followed by the limited scope for challenge left under Section 34 of the Act, and limited interference made in proceedings under Section 37 of the Act as well as by Supreme Court, the same has made arbitrations the most preferred method of dispute resolution for the construction industry. The other aspect of costs of arbitration has also now been considered in the amendment made to the Act and the arbitrators' fees have been curtailed basis the schedule provided in the Act, making the costs involved in an arbitration more predictable and

The other traditional mode followed by the industry in the olden times was to take their disputes to courts with parties filing for damages and specific performance against the other party. However, with the cases taking years before the courts and forums, the construction industry swiftly changed their strategy to adopt arbitration more than litigation. It was in

this light that the commercial courts were established in all major high courts for disputes above a certain threshold (₹1 Crore and above) in order to ensure expeditious hearing of the cases before courts. Various amendments were carried out in the Code of Civil Procedure 1908 to include the provisions of the Commercial Courts Act, including fixing the timelines for various procedures as prescribed. Newer mechanisms of convening case management hearings for framing of issues were introduced which was thus far an alien concept in the Indian judicial dispensation system. These changes that have been brought about in the courts have facilitated expeditious hearings and the parties are now finding cost-effective recourse in litigation as compared to arbitration, which becomes an expensive affair with arbitrator's fees, institutional expenses, matters subsequently ending up in courts with challenges made to the awards under Section 34 of the Act followed by an appeal under Section 37 of the Act and the matter ultimately being decided by the Supreme Court. The commercial courts are less expensive with the court fees being much lesser in comparison to the arbitrator's fees. While the decree passed by the single Judge is still subjected to the regular first appeals and thereafter followed up to Supreme Court in SLPs, the cost involved most times in pursuing a matter before the court is less expensive than pursuing the same in arbitration. However with all the virtues being discussed about resorting to the commercial courts, the fact of the matter remains that arbitration has taken a clear lead in the run to the best option for resolution of disputes in the construction industry. Almost all construction agreements consist of a dispute resolution clause wherein arbitration is preceded either by a negotiation by the parties themselves within a particular timeframe or mediation/conciliation through their respective mechanisms.

In construction contracts, the Dispute Resolution/Review Board also plays a pivotal role since it precedes the traditional dispute resolution mechanisms. The Board keeps a vigil on the site and the progress made in constructions and thus in case of disputes, it takes efforts for amicable settlement of such disputes. The Board consists of 3 members, one member each appointed by the respective parties and the Chairman is selected by the 2 Party appointed Members. Since the members are neutral, independent, usually from the construction industry and thus have the requisite experience and familiarity in interpreting the contracts, it enables amicable resolution of disputes expeditiously. Upon the failure in arriving at settlement, the Board Member recommends resorting to Litigation or Alternate Dispute Mechanism provided for under the Contract.

### The Road Ahead

The future of the construction industry lies in making contracts more enforceable and the resolution of their dispute clauses more effective. Considering that most construction-related disputes arise in relation to public contracts between the government and private parties, the government has emerged as the prime litigator in most cases with little leeway to resolve their disputes amicably. The Union Budget 2015-2016 had proposed to introduce the Public-Contracts (Resolution of Disputes) Bill, 2015 to streamline the institutional arrangements for resolution of such disputes. The Bill suggested setting up of a tribunal for public contracts to: adjudicate upon disputes and differences, refer the disputes and differences to arbitration, and adjudicate upon awards arising from such proceedings, adjudicate upon disputes involving a public authority, service provider or contractor and exercise supervisory control over the arbitral proceedings. The jurisdiction of the tribunal was proposed to include disputes arising from a public contract that has been executed or entered by any Centre, state or local authority or any entity society or trust owned or controlled by the government. Such a law is still awaited, but will still need to overcome the challenge of excessive tribunalization of dispute resolutions. Though specialized expertise and sectorial understanding of issues and complexities peculiar to the real estate sector is key to expeditious resolution of construction disputes, numerous other tribunals set up to reduce the burden of the courts have been of little help.

In order to make the construction industry more robust, the focus ought to be to make the resolution and enforcement of construction disputes expeditious and cost effective and steps in this direction are required to be taken on an urgent basis, including setting up of more cost effective institutional arbitration centre's on the lines of CIAC to provide specialized dispute resolution mechanisms with a tiered approach for resolution of disputes be provided under one umbrella and facilitation of negotiation, mediation, conciliation and arbitration be made available for the parties.



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

# IEGALE INTERNATIONAL IP 2019 CONCLAVE

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The two-day Conclave organized by Legal Era Magazine saw insightful discussions on IP innovation, strategy and the emerging landscape in the 21st century



he International Intellectual Property Conclave & Awards (IIPCA) 2019, was successfully concluded on January 16 & 17, 2019, by *Legal Era Magazine*, India's No. 1 Magazine on Business and the Legal World.

In its sixth year now, the Conclave witnessed participation from pioneers of the IP industry, including the likes of Shri O P Gupta (IAS), Controller General of Patents, Designs & Trade Marks, Intellectual Property India, Mumbai, India; Pravin Anand, Managing Partner, Anand and Anand; Ganapathy Narayanan, Lead - Corporate IP Governance, Tata Consultancy Services Ltd.; Jyotsna Ghoshal, Senior Director - Corporate Affairs, MSD India; **Dr. Aravind Chinchure**, Chair Professor of Innovation and Entrepreneurship, Symbiosis International University; Taranpreet Singh Lamba, Vice-President, Intellectual Property and Global Product Portfolio, Glenmark Pharmaceuticals Ltd; Arshad Jamil, Associate Vice President - IPR, Biocon Ltd.; Dr. Malathi Lakshmikumaran, Director & Practice Head, New Delhi, Lakshmikumaran & Sridharan Attorneys; Matthew L. Fedowitz, Shareholder – Intellectual Property, Buchanan Ingersoll & Rooney PC; Prof. (Dr.) Prabuddha Ganguli, CEO, VISION-IPR, Visiting Professor, Rajiv Gandhi School of Intellectual Property Law, IIT; Prof. Dr. Heinz Goddar, European and German Patent and Trademark Attorney, BOEHMERT & BOEHMERT; and Dr. Anindya Sircar, IP Consultant.

More than 60 globally renowned Intellectual Property speakers and over 200 delegates attended the Conclave.

The first session of Day 1 of the Conclave titled "What Role Can India Play In Making The Global IP Ecosystem Fairer, Less Complex, And More Useful For People?" saw participation from Pravin Anand, Managing Partner, Anand and Anand; Ganapathy Narayanan, Lead - Corporate IP Governance, Tata Consultancy Services Ltd.; Jyotsna Ghoshal, Senior Director, Corporate Affairs, MSD India; and Shri O.P. Gupta (IAS), Controller General of Patents, Designs & Trademarks Intellectual Property India, Mumbai, India.

Moderating the second session of Day 1 titled, "Trade Secrets: What's the Fuss About!" was Dr. Aravind Chinchure, Chair Professor of Innovation and Entrepreneurship, Symbiosis International University. The participants were; Taranpreet Singh Lamba, Vice-President Intellectual Property and Global Product Portfolio, Glenmark Pharmaceuticals Ltd; Kavita Nigam, Partner, Krishna & Saurastri Associates LLP; and Meenu Chandra,

Advocate, IP and Technology Law, Consultant Partner, Adyopant Legal.

Participating in the third session of Day 1 titled, "Whose song is it anyway? Copy – My Rights" were Ayan Roy Chowdhury, Director Legal, Sony Pictures Entertainment, India; Lakshika Joshi, Global IP Head and Legal Leadership, Aricent; and Shikha Singhi, Head – Film Music (Junglee Music), Times Music. The discussion was moderated by Vanditta Malhotra Hegde, Founder & Managing Partner, Singh&Singh | Malhotra&Hegde, Attornevs.

Session four of Day 1 titled, "Biosimilar Litigation for the Hatch-Waxman Litigator" saw participation from Arshad Jamil, Associate Vice President – IPR, Biocon Ltd.; Dr. Malathi Lakshmikumaran, Director & Practice Head, New Delhi, Lakshmikumaran & Sridharan Attorneys; and Dr. Mahendra B. Thakre, General Manager – IPR, Mylan Laboratories Ltd. It was moderated by Archana Shanker, Senior Partner & Head of Department – Patents & Designs, Anand and Anand.

"The 505 (b) (2) platforms and the Next Generation of Pharma in the US" was the fifth of Day 1 moderated by Matthew L. Fedowitz, Shareholder – Intellectual Property, Buchanan Ingersoll & Rooney PC. Participating in the discussion were Barbara A. Binzak Blumenfeld, Shareholder Buchanan Ingersoll& Rooney PC; and Rajesh Sagar, Managing Associate, Solicitor (UK), Marks & Clerk Solicitors LLP.

Session six of Day 1 titled "Pharmaceutical Wars: Who's The Bigger/Better Innovator!" saw participation from Arshad Jamil, Associate Vice President - IPR, Biocon Ltd.; Purnima Malkani, Sr Vice President & Head - Legal and IPR, Reliance Life Sciences Pvt. Ltd.; Amit Thukral, Vice President - Legal, APAC, Lupin Limited. It was moderated by Dr. Mandar M Kodgule, Chairman & CEO, IQGEN-X Pharma Pvt Ltd.

"FRAND & SEP: Unseen Ironies Under IP And Competition Law" was the last session of Day 1 moderated by Prof. (Dr.) Prabuddha Ganguli, CEO, VISION-IPR; Visiting Professor, Rajiv Gandhi School of Intellectual Property Law, IIT. Participating in the discussion were Pravin Anand, Managing Partner, Anand and Anand; Dr. S. K. Murthy, Patent Counsel, Intel India; Anubhav Kapoor, General Counsel and Company Secretary, Microland

Day 1 of the Conclave culminated in the Legal Era Intellectual Property Awards 2019, where *Legal Era - Legal Media Group* 

### IP AWARDS 2019 WINNERS





felicitated Leading IP Professionals and Women in IP at a powerpacked ceremony held @ Hotel Taj Lands End, Mumbai, India, on January 16, 2019.

The Award Ceremony was graced by Chief Guest Honorable Justice Anoop V. Mohta, Former Judge, Bombay High Court.

The winners of the Legal Era Intellectual Property Awards 2019 were:

In the Individual segment, In-House IP Counsel of the Year (Pharma) was conferred on Taranpreet Singh Lamba, Vice-President, Intellectual Property and Global Product Portfolio, Glenmark Pharmaceuticals Ltd; In-House IP Counsel of the Year (Pharma) was won by Dr. Mahendra B. Thakre, General Manager, IPR-Legal, Mylan Laboratories Limited; Dr. S. K. Murthy, Patent Counsel, Intel India, received In-House IP Counsel of the Year (IT); and In-House IP Counsel of the Year (Manufacturing) was presented to Munish Sudan, Head, Intellectual Property, Tata Steel Limited.

In the In-House segment, IP Team of the Year (Biotech) was conferred on **Biocon Limited**; *IP Team of the Year (IT)* was presented to Tata Consultancy Services Limited (TCS); Lupin Limited received IP Team of the Year (Pharma); IP Team of the Year (Manufacturing) was won by Mahindra & Mahindra Limited; and Siemens India bagged IP Team of the Year (Electrical and Electronics).

In the Law Firm segment, Patent Law Firm of the Year was presented to Lakshmikumaran & Sridharan Attorneys; Anand & Anand won Trademark Law Firm of the Year; Copyright Law Firm of the Year was conferred on Singh&Singh | Malhotra&Hegde, Attorneys; and Anand & Anand received IP Law Firm of the Year (Overall).

The recipients of the "IP Star Women Awards of the Year" were: Anuradha Maheshwari, Founder, Lex Mantis; Archana Shanker, Senior Partner & Head of Department - Patents and Designs, Anand and Anand; Dr. Mahalaxmi Andheria, Head-IPR, Ajanta Pharma; Dr. Malathi Lakshmikumaran, Director & Practice Head of Patents (New Delhi), Lakshmikumaran & Sridharan Attorneys; Gunjan Paharia, Managing Partner, Zeus IP Advocates LLP; Jyotsna Ghoshal, Senior Director - Corporate Affairs, MSD India; Kanchana TK, Director General, OPPI; Lakshika Joshi, Global IP Head and Legal Leadership, Aricent; Manisha Singh, Founder Partner, LexOrbis; Meenu Chandra, Advocate, IP & Technology Law Consultant; Partner, Adyopant Legal; Nupur Khanna, Founder & Managing Partner, Corporate Laws Practice; Purnima Malkani, Sr VP &Head-Legal & IPR, Reliance Life Sciences Pvt Ltd (RLS); Rachna Bakhru, Partner, RNA, Technology and IP Attorneys; Sheetal Talwar, DGM – Legal, Tata Chemicals Limited (TCL); Sudha Kannan, Head - Patent Cell and Knowledge Centre, Aditya Birla Science & Technology Company Private Limited; Swati S. Veera, Senior In-House Patent Counsel, Indoco Remedies Ltd.; Taruna Gupta, Program Head, IP & Engineering Group, TCS; Vanditta Malhotra Hegde, Founder and Managing Partner, Singh&Singh | Malhotra&Hegde, Attorneys; and Vijayalakshmy Malkani, IP Counsel, Hindustan Unilever Limited (HUL).

The evening stretched long after the actual ceremony with the attendees wining and dining into the starry night.

Day 2 of the IIPCA 2019 began with a session titled, "How Will



Chief Guest Honorable Justice Anoop V. Mohta, Former Judge, Bombay High Court.

AI, Machine Learning, And Analytics Impact Patenting? [The Kinds Of Patents People Seek? Prior Art Search? The Patent Application And Grant Process? Patent Licensing? Value Extraction?]". Moderated by Madhav Kulkarni, Intellectual Capital Manager, Dow Chemical Int. Pvt. Ltd., the discussion saw participation from Vijay Srirangan, Director General, Bombay Chamber of Commerce & Industry; Dr Narayan (Nar) Subramanian, Head Patent Analytics, Tata Consultancy Services; Pushpak Singh, Customer Success Manager, Questel; and Subramaniam Vutha, Proprietor, Subramaniam Vutha Advocate.

Participating in the second session of Day 2 titled, "How will Industrial IOT impact IPR and vice-versa" were Sudha Kannan, Head - Patent Cell and Knowledge Centre, Aditya Birla Science & Technology Company Private Limited; Vishnumohan Rethinam, Partner, Remfry & Sagar; and Prashant Mara, Partner, BTG Legal. The discussion was moderated by Anuradha Maheshwari, Founder, Lex Mantis.

Moderating the third session of Day 2 titled, "Data Localization: Balancing the Interests of Industry, Government and Civil Society" was Arun Prabhu, Partner, Cyril Amarchand Mangaldas. Participating in the discussion were Srinjoy Banerjee, Founder, Excaliburancy; N.S. Nappinai, Principle, Nappinai & Advocates; and Ritesh Bhatia, Founder Director, V4WEB Cyber Security.

"How will the IP Ecosystem Cope with Networked and Intelligent "Things"? Who is the Creator of those "Things"? Who owns what the "Things" Create?" was the fourth session of Day 2 of the Conclave. Moderated by Ganapathy Narayanan, Lead - Corporate IP Governance, Tata Consultancy Services Ltd.; the discussion was participated in by Prof. Dr. Heinz Goddar, European and German Patent and Trademark Attorney, BOEHMERT & BOEHMERT; Srinjoy Baneriee, Founder, Excaliburancy; and Neha Mahyavanshi, Director, Field Compliance Officer (South Asia), SAP India Private Limited.

Moderated by Dr. Anindya Sircar, IP Consultant, Session 5 of Day 2 "What IP Allocation And Cross-Licensing Challenges Will Open Innovation Present? What Options Can We Formulate For The Greater Collaborative Creation Of IP?" saw participation from Swati Veera, Senior In-house Patent Counsel, Indoco Remedies Ltd.; Munish Sudan, Head Intellectual Property, Tata Steel Limited; Subramaniam Vutha, Proprietor, Subramaniam Vutha Advocate; and Biju K. Nair, Licensing Lead (India), Open



What Role Can India Play In Making The Global IP Ecosystem Fairer, Less Complex, And More Useful For People? (L-R): Pravin Anand, Managing Partner, Anand and Anand; Shri O P Gupta (IAS), Controller General of Patents, Designs & Trade Marks, Intellectual Property India, Mumbai, India; Ganapathy Narayanan, Lead - Corporate IP Governance, Tata Consultancy Services Ltd.; Jyotsna Ghoshal, Senior Director - Corporate Affairs, MSD India



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Meenu Chandra, Advocate IP & Technology Law Consultant Partner, Adyopant Legal; Kavita Nigam, Partner, Krishna & Saurastri Associates LLP; Taranpreet Singh Lamba,

Vice-President Intellectual Property and Global Product Portfolio, Glenmark Pharmaceuticals Ltd



Whose Song Is It Anyway? Copy - My Rights (L-R): Vanditta Malhotra Hegde, Founder & Managing Partner, Singh&Singh | Malhotra&Hegde, Attorneys; Lakshika Joshi, Global IP Head and Legal Leadership, Aricent; Ayan Roy Chowdhury, Director Legal, Sony Pictures Entertainment, India; Shikha Singhi, Head – Film Music (Junglee Music), Times Music





Biosimilar Litigation For The Hatch-Waxman Litigator (L-R): Archana Shanker, Senior Partner & Head of Department - Patents and Designs, Anand and Anand; Arshad Jamil, Associate Vice President - IPR, Biocon Ltd.; Dr. Mahendra B. Thakre, General Manager - IPR, Mylan Laboratories Ltd.; Dr. Malathi Lakshmikumaran, Director & Practice Head, New Delhi, Lakshmikumaran & Sridharan Attorneys



The 505 (b)(2) platform and the Next Generation of Pharma in the US (L-R): Matthew L. Fedowitz, Shareholder – Intellectual Property, Buchanan Ingersoll & Rooney PC; Barbara A. Binzak Blumenfeld, Shareholder, Buchanan Ingersoll & Rooney PC; Rajesh Sagar, Managing Associate Solicitor (UK), Marks & Clerk Solicitors LLP



Pharmaceutical Wars: Who's The Bigger/Better Innovator! (L-R): Arshad Jamil, Associate Vice President - IPR, Biocon Ltd.; Purnima Malkani, Sr Vice President & Head - Legal and IPR, Reliance Life Sciences Pvt. Ltd.; Amit Thukral, Vice President - Legal, APAC, Lupin Limited; Dr. Mandar M Kodgule, Chairman & CEO, IQGEN-X Pharma Pvt Ltd





FRAND & SEP: Unseen Ironies Under IP And Competition Law (L-R): Pravin Anand, Managing Partner, Anand and Anand; Prof. (Dr.) Prabuddha Ganguli, CEO, VISION-IPR; Visiting Professor, Rajiv Gandhi School of Intellectual Property Law, IIT; Dr. S. K. Murthy, Patent Counsel, Intel India; Anubhav Kapoor, General Counsel and Company Secretary, Microland



How Will AI, Machine Learning, And Analytics Impact Patenting? [The Kinds Of Patents People Seek? Prior Art Search? The Patent Application And Grant Process? Patent Licensing? Value Extraction?] (L-R): Madhav Kulkarni, Intellectual Capital Manager, Dow Chemical Int. Pvt. Ltd.; Vijay Srirangan, Director General, Bombay Chamber of Commerce & Industry; Dr. Narayan (Nar) Subramanian, Head Patent Analytics, Tata Consultancy Services; Pushpak Singh, Customer Success Manager, Questel; Subramaniam Vutha, Proprietor, Subramaniam Vutha; Advocate



How Will Industrial IOT Impact IPR And Vice Versa? (L-R): Anuradha Maheshwari, Founder, Lex Mantis; Sudha Kannan, Head - Patent Cell and Knowledge Centre, Aditya Birla Science & Technology Company Private Limited; Vishnumohan Rethinam, Partner, Remfry & Sagar;

Prashant Mara, Partner, BTG Legal





Data Localization: Balancing The Interests Of Industry, Government And Civil Society (L-R): Arun Prabhu, Partner, Cyril Amarchand Mangaldas; Srinjoy Banerjee, Founder, Excaliburancy; N. S. Nappinai, Principle, Nappinai & Co., Advocates; Ritesh Bhatia, Founder Director, V4WEB Cyber Security



How Will The IP Ecosystem Cope With Networked And Intelligent "Things"? Who Is The Creator Of Those "Things"? Who Owns What The "Things" Create? (L-R): Ganapathy Narayanan, Lead - Corporate IP Governance, Tata Consultancy Services Ltd.; Prof. Dr. Heinz Goddar, European and German Patent and Trademark Attorney, BOEHMERT & BOEHMERT; Srinjoy Banerjee, Founder, Excaliburancy; Neha Mahyavanshi, Director, Field Compliance Officer (South Asia), SAP India Private Limited



What IP Allocation And Cross-Licensing Challenges Will Open Innovation Present? What Options Can We Formulate For The Greater Collaborative Creation Of IP? (L-R): Dr. Anindya Sircar, IP Consultant; Swati Veera, Senior In-House Patent Counsel, Indoco Remedies Ltd.; Munish Sudan, Head, Intellectual Property, Tata Steel Limited; Biju K. Nair, Licensing Lead (India), Open Invention Network India; Subramaniam Vutha, Proprietor, Subramaniam Vutha; Advocate



6th International IP Conclave 2019 culminated in a Gala Award Ceremony where Legal Era Magazine honored In-House IP Teams, IP Law Firms and IP Attorneys

# And The Winners Are

### INDIVIDUAL WINNERS











### IP STAR WOMEN OF THE YEAR WINNERS



### **ANURADHA MAHESHWARI**

Founder, Lex Mantis

nuradha is the Founder of Lex Mantis, a legal service firm started in 2012 and specializes in the areas of corporate, intellectual property, transactional, real Nestate, constitutional, and human rights laws. With over 15 years of experience in advocacy, dissemination, and legal advise related to intellectual property law, she is particularly experienced in filing and prosecuting Patents, Trademarks, Designs, and Copyright applications, including devising their enforcement and management strategies, as well as negotiating and drafting technology transfers, licenses, and franchises. Anuradha has been lending her expertise in advising and managing IP disputes and devising winning strategies for her clients. She is equally experienced in all kinds of corporate and commercial transactions, entity structuring and incorporation, structuring corporate deals & transactions, due diligence, and documentation.

She has assisted and hand-held many a small and medium enterprise in protecting and managing their intellectual properties and her firm was declared one of the "20 Most Promising Legal Consultants of India", especially for start-ups, by a leading technology publication in 2015. In 2016, Lex Mantis received an award for 'Best Practices in Patents & IP Excellence in India' from Questel de Science Infoware, a global patent analytic data provider. She has thus engaged with large-to-mid-market companies and several startups with well-established brands.

### ARCHANA SHANKER

Senior Partner & Head of Department Patents and Designs. Anand and Anand

s Senior Partner at Anand and Anand, Archana Shanker heads the firm's Patents and Design practice. Archana's comprehensive repertoire enables her to represent clients to advise on protection and prosecution across a number of business sectors.

> She has been involved in advising clients on patent strategies and regulatory affairs across disparate geographies ranging from India to USA, Europe, Japan and other key jurisdictions and has led to wins that are noteworthy

in the history of Indian Jurisdiction. Her unique and innovative approach has led to her clients winning important claims of significant commercial value in the area of software, mechanics, electronics, automobiles, Life biodiversity Sciences, other and many business dominant sectors.

Archana has over 25 years of experience in Prosecution, patents strategy and designs across all technical domains.

### CHITRA IYER

Head of IP&S India Philips Intellectual Property & Standards



hitra Iyer is currently the Head of highly regarded and respected Philips – "Intellectual Property & Standards" office in India and has overall responsibility for the office in India. She has a decade of experience as a Scientist (Pharma/ bio-tech), followed by about 15 of experience/expertise intellectual property

law. Chitra is responsible for several successful and timely launches of innovations in the market,

by collaborating with internal stakeholders with effective IP strategy along with complete understanding of the business needs. She has worked in India and Europe. Her current and past responsibilities include IP due diligence, contract negotiations for India, ASEAN, ANZ, and IP offensive and defensive enforcement actions. Her areas of expertise are Counseling, Contracts & Agreements, M&A, Negotiations, IP Enforcement Strategies (Patents, Trademarks, Copyright), including Litigation Strategies, Patent Filing, Prosecution, Trade Secret Protection, University Relations, and Startups Due Diligence, etc. Chitra actively contributes to the evolving IP landscape in India by participating in discussions with external and internal stakeholders and participates in discussions to influence policy-level decisions. In the course of her IP journey, she has an experience spanning about 15 years in law firms and industries. Being involved with the initial product patent regime in India and related challenges, Chitra is very well versed with the Technical, IP, and legal aspects associated with Chemicals and Pharmaceuticals in particular.



### DR. MALATHI LAKSHMIKUMARAN

Director & Practice Head (New Delhi) Lakshmikumaran & Sridharan Attorneys

r. Malathi Lakshmikumaran has more than 30 years of experience in the field of Biochemistry and Molecular Biology, with an expertise in plant genomics, DNA

fingerprinting, and genetic transformation. She has successfully supervised several Ph.D. students in the area of Plant Molecular Biology and has more than 100 publications to her credit in various international and Indian journals. Prior to joining the firm, Dr. Malathi served as the Head of Centre for Bioresource &

Biotechnology Division in The Energy and Resource Institute (TERI) for a period of 17 years. At present, she serves as a Director and heads the life science group at the IP division of Lakshmikumaran

& Sridharan. She is a registered patent agent and has been actively engaged in preparing, filing, and prosecuting of patent applications, both in India and abroad. She mainly works on pharmaceutical, chemical, and biotechnological patent applications. She advises clients on plant variety protection and registration and is actively involved in the area of Biodiversity and Traditional knowledge.

**GUNJAN PAHARIA** 

Managing Partner
ZeusIP Advocates LLP

urrently Managing Partner of ZeusIP Advocates LLP, Gunjan Paharia has nearly two decades of experience in pure intellectual property law and cognate laws, with a special focus on IP enforcement, conduct of detailed due diligence projects, and representation of clients in IP litigation in various courts across India. Gunjan's experience encompasses patents, trademark, copyright and industrial designs, as well as obtaining registrations, counseling on protection, and management of IP assets.

She has worked extensively on prosecuting





### JYOTSNA GHOSHAL

High Court.

Senior Director - Corporate Affairs, MSD India

enior Director for Corporate Affairs at MSD in India, Jyotsna Ghoshal is responsible for policy, government affairs, CSR and corporate communications for the India region. A proficient communications' professional with around 20 years of experience in public relations (PR), stakeholder management and corporate communications across multinational and Indian companies and PR consultancies, Jyotsna joined MSD in India in 2008 as Head of Corporate Communications and took charge of the combined Corporate Affairs and Corporate Communications function in February 2016. Jyotsna has been instrumental in devising and implementing communication strategy for MSD in India, and representing MSD in India amongst key external and internal stakeholders.

Before joining MSD, she worked with LIN Opinion as Communication Director and with TATA POWER (NDPL) as Head of Group Corporate Communications She also worked with leading public relations consultancies and handled the communication mandate for clients in varied industries, including power, oil & gas, aviation, consumer, etc.

Jyotsna holds a B.A (Hons.) in English and a P.G. Diploma in Advertising and Public Relations. She is the Co-Chair of the Pharmaceuticals Committee of the American Chamber of Commerce (AmCham) in India.





### KANCHANA TK Director General, OPPI

s Director General, Kanchana TK represents OPPI at multi-lateral global platforms such as WTO and WHO among others. Kanchana provides suggestions for National IPR Policy, and has ensured that a few of these including studying best practices and success stories in other countries to design and launch public outreach programs; and continuing efforts for promotion of technical cooperation with IP offices in other countries got incorporated in the Policy.

Having championed OPPI's presence at roundtables with the Ministry of Commerce, Ministry of Chemicals & Fertilizers, and Government think-tanks, Kanchana has helped OPPI conduct several roundtables and bring experts from around the world to participate in them, thereby reinforcing the importance of IP in the industry.

Under her leadership, OPPI has conducted scheduled calendar events establishing the value of IP. Notably, Kanchana has spearheaded the creation of a nation-wide, first-of-its-kind digital campaign named #Think for Health, in collaboration with the Government of Telangana, which calls for ideas to improve access to woman & child health, mental health, NCDs and health technology paving the way for improved healthcare in India. The campaign was launched in July 2018. Among other initiatives, Kanchana has been the guiding force behind the 2018 OPPI publication "In Science We Trust" which believes that today's innovation is tomorrow's medicine.

### LAKSHIKA JOSHI

Global IP Head and Legal Leadership, Aricent

As the Global Head of IP practice for the Aricent Group, Lakshika Joshi is steering the company to manage and monetize its IP for unleashing a greater, newer potential. In addition to IP, Lakshika leads the general legal practice by way of managing large transactions, framing policy, ensuring compliances and opining on regulatory frameworks. In a little less than



entertainment,

augmented

management,

e-commerce, production

fitness, wellness, medical,

IT, ITES and Software.

health

celebrity

sports,

reality,

rights

houses,

### MANISHA SINGH

Founder Partner, LexOrbis



anisha Singh is the Founder Partner of LexOrbis, India's premier Intellectual Property law firm, providing end-toend services related to all aspects of IP laws, including advisory and consultancy, asset identification procurement, clearances, protection. transactional. enforcement, and litigations. She has over 21 years' experience in prosecuting IP

matters in India and internationally. As an IP Attorney, Manisha has the unique distinction of practicing IP at both the prosecution and enforcement levels. Through the course, she has been advising a list of varied clients on all legal issues arising in procurement, protection, and enforcement of IP assets. She also regularly represents her clients as their litigating counsel at the Supreme Court of India and various High Courts. Her practice offers innovative and practical solutions on all aspects of IP work, from trademark and design rights litigation to licensing and distribution agreements, assisting clients to discover and restructure their IP assets, portfolio reviews, filing, and enforcement strategies.

Manisha is recognized as a leader in her field and is routinely invited to author articles and commentaries on contemporary IP issues by several national and international publications. She actively indulges in other research engagements to raise awareness in regard to IP. Some of her recent recognitions include: being ranked as a Leading Lawyer in 2018, 2017, 2015, 2014; being recognized among the top 100 IP Leaders in India; being recognized as one of India's Top 100 Lawyers 2017; and being recognized as an IP Star in 2018.



### **NUPUR KHANNA**

Founder & Managing Partner Corporate Laws Practice

upur Khanna is the Founder & Managing Partner, Corporate Laws Practice. She has served as an in-house counsel with Bharti Enterprises, one of India's leading conglomerates with diversified interests in telecom, insurance, real estate, agri and food besides other ventures. During her stint with the Bharti Group, Nupur has been responsible for

leading the IP portfolio of Bharti Enterprises including group companies such as Bharti Airtel, Bharti Infratel, Bharti Realty Limited and various other Bharti Airtel entities spread across 20 countries in Africa. Her expertise lies in advising, strategizing and effective enforcement action patents, with respect to trademarks and copyright. She also has considerable experience in the allied and emerging fields of Information Technology, **Telecommunications** and Media laws. A corporate commercial lawyer with over 13 years of experience

in handling corporate, commercial and litigation matters with a sharp focus on Intellectual Property laws, Nupur started her career in the year 2005 as corporate lawyer with Thakker & Thakker, Mumbai. After having practiced corporate/commercial law for 9 years with top law firms in India including Amarchand Mangaldas, Nupur joined Bharti

Enterprises.

### **PURNIMA MALKANI**

Sr VP & Head-Legal & IPR, Reliance Life Sciences Pvt Ltd (RLS)

r VP & Head-Legal & IPR at Reliance Life Sciences Pvt. Ltd. (RLS), Purnima Malkani has more than 30 years of experience in the industry. At RLS, Purnima designs strategies and policies relating to IP management and legal risk management;

identifies value creation opportunities; assists in drafting patents, trademark applications and other IP protection documentation; performs infringement analysis, advises on IP clearances, and provides freedom to operate (FTO) reports of commercial products; addresses IP risks in agreements for RLS products in global markets; identifies and evaluates existing/ products'/process new patenting opportunities at the national and international level; and assists in developing a profitable product pipeline based on patent expiry.

Prior to RLS, Purnima worked with J.B. Chemicals Ltd. (JBCPL) as Manager – Legal. Before joining JBCPL, she practiced as a lawyer in the Mumbai courts for about five years.



# RACHNA BAKHRU Partner, RNA, Technology and IP Attorneys

Partner, RNA Technology and IP Attorneys, Rachna Bakhru currently heads the firm's dispute resolution team which is heavily involved in IP enforcement, including civil and criminal litigation. With over 20 years of experience in managing non-contentious and contentious IP matters in India, including brand clearances, risk assessment, litigation and alternate dispute resolution, Rachna has worked on the portfolios of large international companies across pharmaceuticals and information technology. She advises clients on issues related to data protection, software piracy, domain disputes, and online infringement. Before joining RNA, Rachna worked for 10 years at the leading international IP consultancy firm, Rouse, heading the dispute resolution team for India. A member of the Bar Council of India and a registered Patent Agent, Rachna has been appointed by the Government of India as a Patent Facilitator to advise startups on the protection of IP rights. She has also been appointed as an Arbitrator by NIXI to adjudicate domain name disputes involving .in and .co.in domains.

Ranked as the world's leading pharmaceutical and life sciences patent litigator in 2010 by a leading publication, Rachna's name has been included in a leading publication's global list of top 250 women in IP, and as IP star in 2016, 2017 and 2018. Her pro-bono work and support to a number of non-government organizations were acknowledged by a leading organization at an award ceremony in 2018.





### SHEETAL TALWAR

DGM - Legal, Tata Chemicals Limited (TCL)

GM - Legal, Tata Chemicals Limited (TCL), Sheetal Talwar has helmed legal compliance for the verticals of consumer products, innovation center, and the entire IPR of TCL since 2003. With more than two decades of experience, especially in IP and its management, compliance management, and business transactions, Sheetal works closely with the central senior leadership - driving IP creation and strategy; evaluating licensing opportunities across all verticals; and protecting IPR, including trademarks, copyrights, patents and designs. Sheetal ensures that new products to be launched are IPR-proof and steer clear of any infringements. Spearheading biotechnology-related IPR as well, Sheetal ensures that all IPRs are in compliance with the National Biodiversity Act. Sheetal has been instrumental in setting up and structuring greenfield businesses across FMCG and manufacturing industries in India, and has played a stellar role in ensuring intellectual property protection and enforcement, apart from pre and post compliances across biotechnology, nanotechnology, technology licensing and collaborations, and green and basic chemistry. She also has first-hand experience in handling civil and criminal litigation across courts in India.



### SUDHA KANNAN

Head - Patent Cell and Knowledge Centre Aditya Birla Science & Technology Company Private Limited

udha Kannan is Head, Patent Cell and Knowledge Centre, Aditya Birla Science & Technology Company Private Limited, the Aditya Birla Group's corporate R&D Centre.

> Having started a career in the pharmaceutical industry more than 25 years ago, Sudha worked with some of the largest libraries in Mumbai before moving to the area of patents. With over 15 years in IP alone, Sudha filed 200 patents across the globe, with almost all of them moving towards grant. Sudha moved to the Aditya

> > Birla Group in 2008. With a background in information analysis plus a Ph.D. in patent search methodology, patent and information analytics and patent prior art search have been Sudha's areas of expertise. Her skills in preparing technical support documents have been particularly useful in filing patent oppositions.

Being a part of corporate R&D for a large conglomerate which is mainly into basic chemistry, Sudha has developed expertise in inorganic chemistry. She has filed close to 100 patents for her current company alone, with very few rejections.

### **SWATI S. VEERA**

Senior In-House Patent Counsel Indoco Remedies Ltd.





### **TARUNA GUPTA**

Program Head, IP & Engineering Group Tata Consultancy Services (TCS)

aruna Gupta holds a graduate degree in Electronics Engineering and has industry experience of 23 years, working with Tata Consultancy Services (TCS). Inher current role as Program Head – Intellectual Property & Engineering (IP&E) Group at TCS, she is responsible for: Promoting IP culture across TCS's business units and alignment of enterprise and unitwise IP strategy to business strategy; IP governance processes for TCS's IP assets (products and solutions) and services; and Liaison with Patent Offices and industry, professional, and



### **VANDITTA MALHOTRA HEGDE**

■ounder

and

Founder and Managing Partner Singh&Singh | Malhotra&Hegde, Attorneys

Managing Partner,

Malhotra&Hegde, Attorneys, Vanditta Malhotra Hegde

Singh&Singh

leads the firm's practice in Mumbai. Vanditta provides legal advisory for established enterprises and start-ups in media and entertainment, the film industry, telecommunications, pharmaceuticals, sports, FMCG, Internet and digital industry, and other new age businesses in terms of preparing documentation, negotiating deals, and taking up litigation across India. Currently, Vanditta advises some of the biggest studios, Internet companies and media groups, including broadcasters operating in India, and believes in providing solutionsbased advisory to her clients in short timelines. She also serves on the board of a leading content producer in Bollywood. Vanditta represents companies various pharma relating to advisory work on DPCO and NPPA-related matters and regulatory compliances. She has a diverse and vibrant trademark practice which includes litigation, prosecution and advisory work for a large number of clients. Well-reckoned in the media and entertainment industry for her strategic work and progressive advocacy in litigation and non-litigation work, Vanditta has been at the forefront advocating progressive copyright laws and taking up other media and entertainment industry issues.



### **VIJAYALAKSHMY MALKANI**

IP Counsel, Hindustan Unilever Limited (HUL)

ijayalakshmy Malkani is an In-House Legal Counsel at Hindustan Unilever Limited (HUL) with broad experience in IP. Prior to HUL, she has worked with reputed companies like BIC India, Marico Limited, and UPL. Her experience focuses principally on various aspects of IP management, IP litigation management, brand protection and enforcement issues (contentious and non-contentious), and monetization of IP. In her current role with HUL, her additional responsibilities include creating and upholding a center of excellence for IP within the teams in India and South Asia, devising strategies with the global team for ensuing a strong IP framework for Unilever and HUL, leading/promoting/conducting capability building/training and IP awareness sessions in-house as well as for law enforcement agencies and school students. Vijayalakshmy is also a guest lecturer in IP at the Institute of Intellectual Property Studies and a dissertation guide/supervisor on topics of IP for students of NMIMS. She was recently recognized as one of the top 100 powerful woman in law by a leading organization. Vijayalakshmy is a law graduate and also holds an LLM in IP from the University of New Hampshire (formerly Franklin Pierce Institute). Her other qualifications include CopyrightX from Harvard Law School, PG Diploma in IP from NLS, Bangalore, and WIPO courses on IP.



### IN-HOUSE IP TEAM WINNERS











### IP LAW FIRM WINNERS









IP Law Firm of the Year (Overall)

ANAND & ANAND





nand and Anand is a full-service IP law firm, providing end-to-end legal solutions covering all cross-sections of Intellectual Property and allied areas. The firm is professionally managed by a Partnership Board comprising 27 Partners and 4 Directors, supported by a management team comprising a CEO, CFO, and CIO. The firm currently employs over 300 people, including over 100 qualified attorneys / engineers, and has offices based in New Delhi, Noida, Chennai, and Mumbai.

The firm's clients consist of several large multinational and Indian companies representing a broad spectrum of industries, including healthcare, electronics, consumer goods, industrial goods, automobiles, wind energy, technology, financial institutions, hospitality, and entertainment. The firm has extensive intellectual infrastructure in all aspects related to trademark registrations, copyright registrations, and IP monetization, as well as in-licensing and franchising. The firm also has an in-house anti-counterfeiting and anti-piracy team, dedicated to providing clients with proactive and robust legal protection for safeguarding their brand identities in the commercial space.

Anand and Anand is a leading firm in the IP field. Its expertise is widely acknowledged in addressing complex IP challenges of all types. It services a diverse portfolio of clients in conventional IP areas such as trademarks, patents, designs, trade secrets, and confidential information, as well as in expanding areas of intellectual property such as domain names, media and entertainment law, information technology and ecommerce, technology transfer, and Internet and privacy laws. The firm specializes in copyright in media and entertainment law and represents authors, musicians, software programmers, artists, designers, and many others from the fraternity of copyright owners, as well as collecting societies.

The firm has multi-disciplinary practice and provides competent and personalized advice on all aspects of core conventional intellectual property laws as well as nonconventional IP mandates.

The firm regularly deals with the protection of IP and prosecution of contentious IP matters in different forums including the Courts at all levels, Patent Offices, Trademark Offices, Design Office and Intellectual Property Appellate Board, and WIPO and National Internet Exchange of India.

The firm balances commercial realities with legal pragmatism and draws on its well-honed expertise and instinct in the field, coupled with a profound understanding of intellectual property management in India. It has a keen interest in innovation and offers creative solutions that tackle the root and not merely the symptoms of a problem.

Culturally, the firm thrives on challenges, creative thinking, and constant improvement of its legal knowledge and skills. The spirited character of the firm is the keystone of its growth and expansion into new areas of IP which have been embraced with ease and zest. The firm remains committed to setting standards of excellence in the field and of impeccable services to clients.

The firm represents over forty brands out of the top hundred biggest brands in the world.

### JINDAL ITF LTD. WINS INR 2015 CRORES PLUS INTEREST AND APPLICABLE TAXES IN ARBITRATION AGAINST NTPC



The Final Award dated 27.01.2019 has now been pronounced by the Hon'ble Arbitral Tribunal, which was constituted of three Hon'ble Members [Justice Vikramajit Sen (Retd.), Justice B.P. Singh (Retd.) and Justice Anil Kumar (Retd.)].

The Arbitral Tribunal passed the Award in favour of M/s. Jindal ITF Ltd. ("JITF") (a PR Jindal Group Company) against NTPC Ltd. ("NTPC").

The S&A Team led by Mr. Manoj K Singh, Founding Partner, Ms. Gunita Pahwa, Joint Managing Partner, Mr. Nilava Bandyopadhyay, Sr Partner and Mr. Rajdutt Shekhar Singh, Partner advised and represented JITF in the arbitration.

The arbitration was relating to the dispute arising out of transhipment of coal in high-seas, deep draft locations (Sandheads and Kanika Sands) from Ocean Going Vessels to Transhipper/barges and transportation of such unloaded coal through barges via National Waterway No. 1 to NTPC's Farakka Power plant situated at Farakka, West Bengal.

This project was an avantgarde project and a unique project of its kind introduced for the first time in India.

The Hon'ble Arbitral Tribunal, after perusal of the pleadings, documents and evidence of the parties, hold that it is NTPC which has contributed majorly towards the delay in construction of Phase I and Phase II.

Due to this delay of NTPC, JITF could not complete the Phase I and Phase II on time and therefore, NTPC is liable to compensate JITF accordingly.

The Hon'ble Tribunal was also pleased to award minimum guaranteed amount for the entire period of Agreement including interest and cost to JITF.

Further, the Hon'ble Tribunal was pleased to dismiss the counter claim of NTPC in its entirety.

Accordingly, the Hon'ble Tribunal awarded an amount of ₹2015 Crores plus interest and applicable taxes to JITE.

Also, while arbitral proceedings were in place, Singh & Associates (on behalf of JITF) filed two interim applications under Section 17 of the Arbitration and Conciliation Act, 1996, praying that NTPC be directed to make payment of the MGQ Amount of ₹158.5 Crore (for the first year of Operation Period) and ₹197.81 Crore (for the second year operation period) as NTPC failed to provide minimum guaranteed coal to JITF at transfer points (deep draft locations in mid-sea).

The Hon'ble Arbitral Tribunal was pleased to allow the interim applications filed by JITF and directed NTPC to pay MGQ Amount of ₹158.50 Crore and ₹197.81 Crore.

The orders passed by Arbitral Tribunal were upheld by the Hon'ble High Court of Delhi and the Hon'ble Supreme Court of India.

This Award is a first of its kind. Award will boost the contractors working in infrastructure and shipping industry. Also, for matters relating to unlawful termination and adherence to the terms of the contract.



# 40 Under 40 Rising Star Awards

A Step Towards Industry-Wide Recognition Of Professional Excellence

# **SUBMISSION BEGINS**

# Most-Awaited Event Of The Year Promoting Young Talent, Encouraging Young Lawyers

The Rising Star Awards will once again identify and honor young, up-and-coming talent under the age of 40 years that exemplifies vision, leadership, innovation, and accomplishment in the legal fraternity. The Award ceremony will be followed by a grand meet-and-greet (accompanied by cocktails and dinner) with the movers and shakers of the legal-business fraternity.

Young lawyers and in-house counsel who have made continuous, exceptional contribution to the profession over the preceding financial year are eligible to send their nominations for the Awards.



# THE NATIONAL COMMISSION FOR INDIAN SYSTEM OF MEDICINE BILL, 2019, INTRODUCED IN THE RAJYA SABHA



The National Commission for Indian System of Medicine Bill was introduced in the Rajya Sabha on 07 January, 2019, and later referred to the Standing Committee on January 11, 2019. The Standing Committee Report is expected to be issued by January 30, 2019.

The National Commission for Indian System of Medicine Bill, 2019, is a Bill providing for a medical education system that improves access to quality and affordable medical education and ensures availability of adequate

and high quality medical professionals of the Indian System of Medicine in all parts of the country; that has an objective periodic and transparent assessment of medical institutions and facilitates maintenance of a medical register of Indian System of Medicine for India and enforces high ethical standards in all aspects of medical services; that encourages such medical professionals to adopt latest medical research in their work and to contribute to research; that promotes national health goals; that promotes equitable and universal healthcare that encourages community health perspective and makes services of such medical professionals accessible to all the citizens; and that is flexible to adapt to the changing needs and has an effective grievance redress mechanism and for matters connected therewith or incidental thereto.

### **National Commission For Indian System Of Medicine**

The Commission will perform functions including: laying down policies to maintain a high quality in education of the Indian System of Medicine; assessing requirements in healthcare, including human resources for health and healthcare infrastructure and developing a roadmap for meeting such requirements; etc.

# INTEREST CAN BE CLAIMED BY FLAT BUYER EVEN FOR A 22-MONTH DELAY IN POSSESSION

Even a delay of 22 months entitles a flat buyer to claim interest, the state consumer commission has held. Malad resident Neela More had booked a 607 square feet flat for ₹13 lakh in June 2000, but got possession 22 months later, in April 2002.

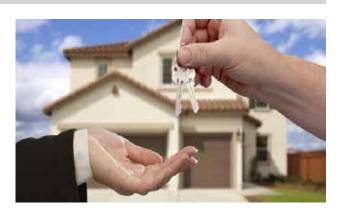
Apart from the 24% interest levied on the ₹13 lakh for 22 months, the state commission ordered the builder to pay ₹1 lakh as compensation for the mental agony caused.

The complaint was filed by More against Ceekeam Enterprises before the Maharashtra State Consumer Disputes Redressal Commission in 2003.

She told the commission that on 21 March, 2000, she signed an agreement with the builder for the flat and the agreed date of possession was June 2000.

The entire amount was paid but More got the flat only in April 2002. She submitted the complaint, alleging deficiency in service.

The developers claimed that the delay in handing over the flat was because of non-issuance of occupation certificate by



the municipal corporation and that there was no deficiency in service on their part. They also said that the complainant had not paid ₹2 lakh that was due.

However, More had submitted receipts to show that the amount was not outstanding, the commission said. The commission also refuted the developers' claim that the flat was handed over in time.

### LOK SABHA PASSES NEW DELHI INTERNATIONAL ARBITRATION **CENTRE BILL**



The New Delhi International Arbitration Centre Bill, 2018, was passed on January 4 to set up a new international arbitration centre in New Delhi.

The New Delhi International Arbitration Centre is for creating an independent and autonomous regime for institutionalized arbitration and acquisition and transfer of undertakings of the International Centre for Alternative Dispute Resolution. According to the bill, the New Delhi International Arbitration Centre will be established for exercising the powers and discharging the functions under this Act by the central government by notification. The New Delhi International Arbitration Centre will be a corporate body with the power to acquire, hold and dispose of movable and immovable property and enter into contract.

The Centre will be an institution of national importance. Its head office will be in New Delhi and it could, with the previous approval of the central government, establish branches at other places in India and abroad. Further, a Chamber of Arbitration will be established by the Centre which will empanel arbitrators and scrutinize applications for admission to the panel.

In the bill, Hon'ble Ravi Shankar Prasad, Minister of Law & Justice and Electronics and Information Technology, Government of India, said, "...it has been decided to establish a new institution to be called the New Delhi International Arbitration Centre (NDIAC) for better management of arbitration in the country and to declare it an institution of national importance. Further, the undertakings of the International Centre for Alternative Dispute Resolution (ICADR) need to be taken over without interfering with the activities and without adversely affecting the character of ICADR as a Society, so that the existing infrastructure and other facilities which have been set up by the public funds provided by the Government may be appropriately utilized for the overall development of institutional mechanism in arbitration."

"The Bill envisages appointment of persons of repute and having knowledge and expertise in institutional arbitration as Chairperson and Members of the NDIAC. The objects of the NDIAC would be to bring targeted reforms to develop it as a flagship institution for domestic and international arbitration. It will conduct arbitration in a professional manner in the most cost effective way. The Bill also proposes to set up an Arbitration Chamber, which would empanel professional arbitrators at national and international level. An Arbitration Academy is also proposed to be set up by NDIAC to train arbitrators in India, so as to empower them to compete on par with reputed arbitral institutions."

# MUSLIM WOMEN (PROTECTION OF RIGHTS ON MARRIAGE) ORDINANCE PROMULGATED BY PRESIDENT

A notification was issued by the Ministry of Law and Justice (Legislative Department) on January 12 stating that President Ram Nath Kovind had promulgated the Muslim Women (Protection of Rights on Marriage) Ordinance, 2019. The Ordinance protects the rights of married Muslim women and prohibits divorce by pronouncing talag by their husbands.

The Ordinance, deemed to have come into force on September 19, 2018, extends to the whole of India except Jammu and Kashmir. According to the Ordinance, any pronouncement of talag by a Muslim husband upon his wife, by words, either spoken or written or in electronic form or in any other manner whatsoever, shall be void and illegal. Any Muslim husband who pronounces talag upon his wife shall be punished with imprisonment for a term which may extend to three years, and shall also be liable to fine.



Further, a married Muslim woman upon whom talag is pronounced shall be entitled to receive from her husband such amount of subsistence allowance for her and dependent children as may be determined by the Magistrate. Also, a married Muslim woman shall be entitled to custody of her minor children in the event of pronouncement of talaq by her husband, in such manner as may be determined by the Magistrate.

# ECONOMICALLY WEAKER SECTIONS GET 10% RESERVATION IN CENTRAL GOVERNMENT POSTS. SERVICES

An Office Memorandum was issued on 19 January by the Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training, Government of India, with regard to reservation for Economically Weaker Sections (EWSs) in civil posts and services in the Government of India.

### As per the Memorandum:

"In pursuance of the insertion of Clauses 15(6) and 16(6) in the Constitution vide the Constitution (One Hundred and Third Amendment) Act, 2019, and in order to enable the Economically Weaker Sections (EWSs) who are not covered under the existing scheme of reservations for the Scheduled Castes, the Scheduled Tribes, and the Socially and Educationally Backward Classes to receive the benefits of reservation on a preferential basis in civil posts and services in the Government of India and admission in Educational Institutions, it has been decided by the Government to provide 10% reservation to EWSs in civil posts and services in the Government of India and admission in Educational Institutions.

Persons who are not covered under the existing scheme of reservations for the Scheduled Castes, the Scheduled Tribes, and the Socially and Educationally Backward Classes and whose family has gross annual income below ₹8.00 lakh are to be identified as EWSs for the benefit of reservation. Family for this purpose will include the person who seeks benefit of reservation, his/her parents and siblings below the age of 18 years as also his/her spouse and children below the age of 18 years. The income shall include income from all sources, i.e., salary, agriculture, business, profession, etc., and it will be income for the financial year prior to the year of application. Also, persons whose family owns or possesses any of the following assets



will be excluded from being identified as EWSs, irrespective of the family income:

- 5 acres of Agricultural Land and above,
- Residential flat of 1000 sq. ft. and above;
- Residential plot of 100 sq. yards and above in notified municipalities;
- Residential plot of 200 sq. yards and above in areas other than the notified municipalities.

The income and assets of the families as mentioned in Para 2 would be required to be certified by an officer not below the rank of Tehsildar in the States/UTs. The officer who issues the certificate would do the same after carefully verifying all relevant documents following due process as prescribed by the respective State/UT.

Instructions regarding reservation in employment and admission to educational institutions will be issued by DOPT and Ministry of HRD, respectively."

The end of the Memorandum reads as: "In pursuance of the above Office Memorandum, it is hereby notified that 10% reservation would be provided for Economically Weaker Sections (EWSs) in central government posts and services and would be effective in respect of all Direct Recruitment vacancies to be notified on or after 01/02/2019."

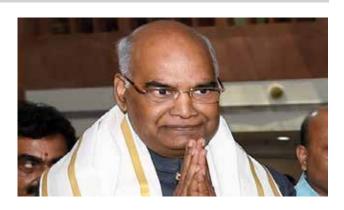
# COMPANIES (AMENDMENT) ORDINANCE, 2019, PROMULGATED BY PRESIDENT RAM NATH KOVIND

As per a Notification issued by the Ministry of Law and Justice (Legislative Department) on 12 January, President Ram Nath Kovind promulgated "The Companies (Amendment) Ordinance, 2019", an Ordinance to amend the Companies Act, 2013.

Several sections have been amended in the 2019 Ordinance.

Two new sections – i.e. section 10A (commencement of business etc.) and section 454 (penalty for repeated default) have been inserted.

Two sections – i.e. section 87 (rectification by central government in register of charges) and section 159 (penalty for default of certain provisions) have been substituted.



### DIDN'T GIVE LOAN TO SURAKSHA REALTY: SUN PHARMA

Sun Pharma came out with a lengthy clarification, denying it advanced any Ioan to Suraksha Realty, owned by Sudhir Valia, brother-in-law of Dilip Shanghvi, main promoter of Sun Pharma.

Sun Pharma denied it had ever stood guarantee for any of the real estate firm's dealings. The pharma major also said that it would transfer its domestic formulations business to its wholly-owned subsidiary from Aditya Medisales. The Sun Pharma stock rallied to close the BSE session at ₹418 - up five per cent on the day, after the clarification. Last week, in a 172-page letter to SEBI, a whistleblower claimed serious corporate governance lapses at Sun Pharma, detailing how loans were given to various companies related to the promoters and their relatives, and also how funds were diverted.

Sun Pharma refuted the charges. According to the complaint, Aditya Medisales had transactions worth ₹5,800 crore (\$814.31 million) with Suraksha Realty.

### INDIAN CURRENCY ABOVE ₹100 BANNED BY NEPAL'S **CENTRAL BANK**

The use of Indian currency notes of ₹2,000, ₹500 and ₹200 denominations has been banned by Nepal's central bank. The move may affect Indian tourists visiting the Himalayan nation where Indian currency is widely used.

Nepal Rastra Bank issued a circular prohibiting Nepali travelers, banks and financial institutions from holding or carrying and trading Indian bank notes higher than ₹100, a leading Nepali daily reported. Indian currency of ₹200, 500 and 2,000 denominations could not be carried and used for trading, the central bank said in its circular. While Nepali citizens cannot carry these denominations to countries other than India or bring them into Nepal from other countries, Indian notes of 100 or above will continue to be allowed for trading and conversion, said the bank circular.

Travel traders and entrepreneurs have criticized the ban saying it will hurt the country's booming tourism at a time when the government has announced the "Visit Nepal" campaign to attract at least 2 million tourists in 2020.



It is learned that 1.2 million Indians came to Nepal through the surface route while 160,132 traveled via air, and the average length of stay of Indian tourists coming over land was 5.8 days. Average expenditure per visitor was as much as ₹11,310.

Earlier this year, Nepal Premier K P Sharma Oli had said that demonetization hurt the Nepalese people and that he would raise the matter with Indian leaders.

### ONLY 73 OUT OF 670 JUDGES IN VARIOUS HIGH COURTS ARE **WOMEN: CENTRE TO PANEL**

The government has informed the parliamentary committee that only 73 out of 670 judges serving in various high courts are women. Also, against the sanctioned strength of 1,079 judges as on 23 March, 2018, only 670 judges are working in 24 high courts of the country, leaving 409 vacancies, the government pointed out.

The Department of Justice in the Law Ministry informed the department-related Standing Committee on Law and Personnel, "There are 73 women judges working in different high courts as on 23 March, 2018, which in percentage terms is 10.89 per cent of the working strength."The Centre had been requesting Chief Justices of High Courts that while sending proposals for appointment of judges, "due consideration" be given to "suitable candidates" belonging to scheduled castes, scheduled tribes and other backward classes, minorities and women.

The government said, "This is being done to ensure a fair representation of different sections of the society in the higher judiciary.""The committee feels that a timeline of six weeks given to the chief minister/governor may be reduced to expedite the process of appointment of judges. It also feels since there is no proposal to raise the retirement age of judges in the higher judiciary by the government, unnecessary delay in recruitment of judges should be avoided at any cost," it said.

# BY FEB 1, NEW TARIFF ORDER OR FULL BLACKOUT: TRAI TO CABLE, DTH OPERATORS

The implementation of the new tariff order is proceeding at a sluggish pace despite repeated assertions by the Telecom Regulatory Authority of India (TRAI).

Less than 50 percent of consumers' choice has been recorded across cable-digital and direct-to-home (DTH) platforms, revealed sources in the know.

TRAI reiterated that implementation of the order has to be completed within the migration timeline i.e. February 1 in a meeting in Delhi. Distribution platform operators (DPOs) will otherwise face consequences ranging from blackout by broadcasters to license cancellation/suspension.

A source close to the development said, "The regulator made it clear that DPOs failing to implement the order within the given timeline will face blackout (by broadcasters). It also said that it will suggest to the Ministry of Information and Broadcasting that licenses of defaulter DPOs be revoked."

Since mid-December 2018, cable and DTH operators have deployed initiatives to facilitate conversion to the new regime.



DEN Networks Chief Executive Officer (CEO) S.N. Sharma said, "In order to migrate to the new tariff order, consumer has various options to exercise his choice of channels through our consumer/LCO mobile applications and web portal. Extensive LCO/distributor awareness programs are under progress wherein the partners are explained in clear terms the benefits they would get in the overall value chain. Prepaid system for cable subscription partners, the most preferred billing option under the new tariff order, has been successfully rolled out during the quarter in select markets".

# NEW EXTERNAL COMMERCIAL BORROWINGS FRAMEWORK RELEASED BY RBI



The Reserve Bank of India (RBI) issued a Press Release with regard to a New External Commercial Borrowings (ECB) Framework on January 16.

According to the Release: The regulations governing all types of borrowing and lending transactions between a person staying in India and a person staying outside India, both in foreign currency and Indian rupees, have been consolidated and the Revised Regulation FEMA 3 R/2018 has been notified by the Government of India on December 17, 2018, as part of the ongoing efforts at rationalizing

multiple regulations framed under FEMA 1999 over a period of time.

It has now been decided in consultation with the Government of India to rationalize the extant framework for ECB and Rupee denominated bonds to further improve ease of doing business.

Today, an A.P. (DIR Series) Circular on the new ECB policy has been issued, incorporating the new framework. Under the existing framework, tracks I and II have been merged as:

- "Foreign Currency denominated ECB" while track III and the Rupee Denominated Bonds framework has been combined as "Rupee Denominated ECB" to replace the present four-tiered structure. The framework is instrument-neutral. The eligible borrowers' list has been expanded with all entities eligible to receive foreign direct investment able to borrow under the ECB framework. Another change is that any entity who is a resident of a FATF or IOSCO compliant country will be treated as a recognized lender.
- Any delay in prescribed reporting under the ECB framework is liable to introduction of late submission fee.

## FORUM OF REGULATORS TO BE CREATED BY MCA TO RESOLVE **IURISDICTIONAL OVERLAP ISSUES**

A forum of regulators is being considered by the ministry of corporate affairs (MCA) as a platform where bodies such as the CCI, TRAI, CERC, IRDA and PNGRB can meet and resolve issues including jurisdictional overlap through discussions.

Many areas of overlapping of jurisdiction have emerged between the Competition Commission of India (CCI) and sector-specific regulators such as the Petroleum and Natural Gas Regulatory Board (PNGRB), Insurance Regulatory Development Authority (IRDA), Central Electricity Regulatory Commission (CERC) and Telecom Regulatory Authority of India (TRAI), and this in turn has led to unnecessary delays, controversies and litigation.

A senior government official said, "All challenges, including overlapping issues, are being addressed by the competition law review committee, which is also thinking of having a statutory provision for a forum of regulators. Some thoughts are there at the preliminary stage. So, that many



issues may be settled by discussion. We also realize nobody wants somebody to become a super regulator".

Another senior government official confirmed the development and said, "The committee is working on all these issues. There are working groups set up. Starting next week, we will again sit as a committee and the working groups will start making presentations."

### ₹10 MILLION MONFTARY PENALTY IMPOSED ON BANK OF **MAHARASHTRA**

Vide an order dated 4 January, 2019, the Reserve Bank of India (RBI) has imposed a monetary penalty of ₹10 million on Bank of Maharashtra (the bank) for non-compliance with Master Directions on Frauds-Classification and Reporting dated 01 July, 2016 and Master Direction on Know Your Customer dated 25 February, 2016 (updated as on 08 July, 2016) issued by RBI.

The RBI has imposed the penalty in the exercise of its powers under provisions of Section 47A (1) (c) read with Section 46 (4) (i) of the Banking Regulation Act, 1949, taking into account the failure of the bank to adhere to the aforesaid directions. The intent is not to pronounce upon the validity of any transaction or agreement entered into by the bank with its customers.

## POLICY PAPER ON AUTHORIZATION OF NEW RETAIL PAYMENT SYSTEMS ISSUED BY RBI

The Reserve Bank of India on 21 January issued a Press Release with regard to a Policy Paper on Authorization of New Retail Payment Systems.

As per the Release:

"In the Statement on Developmental and Regulatory Policies released with the second bi-monthly Monetary Policy Statement 2018-19 on June 06, 2018, Reserve Bank had announced that with a view to minimize the concentration risk in retail payment systems, from a financial stability perspective and to foster innovation and competition, the Reserve Bank would encourage more players to participate in and promote pan-India payment platforms and that the Reserve Bank would bring out a policy paper for public consultation by September 30, 2018."



Among others, details on "Retail payments operator landscape: Concentration and competition perspectives" are provided by the Release.

## RIL'S DEN NETWORK AND HATHWAY CABLE ACQUISITIONS APPROVED BY CCI

Reliance Industries' acquiring of a majority stake in DEN Networks and Hathway Cable, through an order dated January 21, has been approved by the CCI. Now, RIL can subscribe to the preferential issue of purchase equity shares of DEN Networks and equity shares of DEN and Hathway from existing promoters. DEN Networks has made a stock exchange filing showing that Jio Futuristic Digital Holdings Private Limited, Jio Digital Distribution Holdings Private Limited and Jio Television Distribution Holdings Private Limited have received the CCI's approval for the acquisition.

Six special purpose vehicles (SPVs) owned and controlled by Digital Media Distribution Trust, of which RIL subsidiary, Reliance Content Distribution Ltd, is the sole beneficiary, will be used to carry out the acquisition.

Meanwhile, SEBI's comments on the open offer to Hathway's shareholders has been received by RIL, which is waiting for the regulator's comments on the open offer to DEN Networks, GTPL Hathway Ltd, Hathway Bhawani Cabletel and Datacom Ltd. shareholders.

Both deals have cost a total ₹5230 crore.

27,000 LCOs with DEN Networks and Hathway will now be accessible to RIL, whose last-mile access, hardware and backend infrastructure will get a boost.

## CCI OKAYS AMAZON, SAMARA CAPITAL'S BID TO ACQUIRE MORE SUPERMARKETS



The acquisition of India's fourth largest supermarket chain, Aditya Birla Retail Ltd (ABRL) – which runs More supermarkets – by Witzig Advisory Services Private Ltd (WASPL) and the acquisition of 49 per cent of its stake by an Amazon subsidiary has been approved by the Competition Commission of India (CCI). The CCI tweeted, "CCI approves acquisition of 99.99 per cent of the equity share capital of Aditya Birla Retail Limited (ABRL) by Witzig Advisory

Services Private Limited."

Also, the acquisition of 49 percent stake in Witzig Advisory Services, a joint venture controlled by private equity firm Samara Capital, by Amazon.com NV Investment Holdings LLC, a subsidiary of US online retail giant Amazon, was approved by the CCI. The CCI also tweeted, "CCI approves acquisition of 49 percent equity share capital of Witzig Advisory Services Private Limited by Amazon.com NV Investment Holdings LLC."The approvals have come within a month of the Centre tightening norms for foreign direct investment (FDI) in e-commerce.

Around September 2018, Amazon and Samara Capital announced that they would acquire the supermarket chain 'More' owned by the Aditya Birla Group for a rough value of ₹4,200 crore. The \$44-billion Aditya Birla Group's retail arm is ABRL, which is into the food and grocery retail sectors under the brand "More" with two formats, supermarkets and hypermarkets.

## 21 DAYS TO FILE IT RETURNS, SUBMIT RESPONSE FOR NON-FILERS: CBDT

The CBDT said that individuals who had carried out high-value transactions but not filed their income tax returns for the assessment year 2018-19 would get 21 days' time to submit their responses.

The 21 days would be from the date of receiving e-mail or SMS from the IT Department regarding non-filing of tax returns.

The department would consider initiating proceedings under the Income Tax Act 1961 in cases where no return was filed or no response was received for the assessment year 2018-19 within the stipulated time. Several potential

non-filers had been identified by data analysis who had carried out high value transactions in 2017-18 but not filed returns for AY 2018-19, said the Central Board of Direct Taxes (CBDT). However, the CBDT did not disclose the number of such non-filers.

The CBDT said, "Non-filers are requested to assess their tax liability for AY 2018-19 and file the ITR or submit online response within 21 days. If the explanation offered is found satisfactory, matters will be closed online. However, in cases where no return is filed or no response is received, initiation of proceedings under I-T Act 1961 will be considered."

## RAYMOND ISSUED NOTICE BY SEBI ON MARKET RULE **VIOLATIONS**



A show cause notice has been issued to textiles major Raymond citing several violations of the securities market by capital markets regulator SEBI.

Raymond failed to obtain necessary approvals for relatedparty transactions involving the lease of a city property and the company did not comply with shareholder reclassification norms, the SEBI has alleged. There is specific reference to a transaction involving lease of JK House in Mumbai to some of the promoters between 2007 and 2017.

Four flats in JK House had been leased by Raymond to an entity named Pashmina in 2003 which the latter sub-leased to some individuals in the Raymond promoter group including Gautam Singhania, Veena Devi Singhania, Anant Singhania and Akshaypat Singhania.

When the property was being reconstructed in 2015-16, Raymond paid the rent of all sub-tenants including the promoters in alternative accommodation, as per the SEBI notice.

While the promoters were paying ₹7,500 per month for sub-lease with Pashmina, Raymond paid ₹12 lakh per month for alternative accommodation of the Singhanias.

SEBI adjudicating officer Jeevan Sonparote said, "The company provided alternate accommodation to subtenants at approximately 99 per cent discount. Such disparity in rent paid by sub-tenants and the company indicates unfair economic benefit to promoters at the cost of company and its shareholders funds."

All related-party transactions need prior approval of the audit committee under the SEBI's listing obligations and disclosure requirements (LODR).

SEBI said, "It is alleged that, if the said four duplex apartments in JK House were sold to sub-tenants as per the terms and conditions laid down in the tripartite agreement, then it would have resulted in an opportunity cost of over ₹623 crore to the company and its shareholders."



Z

#### **Prothonotary**

pl: -ries [Late Latin protonotarius, from proto- first in time + Latin notarius stenographer]: a chief clerk of any of various courts of law prothonotarial ...

#### **Protocol**

1: an original draft, minute, or record of a document or transaction 2 a: a preliminary memorandum often formulated and signed by diplomatic negotiators as a basis for a final convention or treaty ...

#### Prove

proved proved or: proven [prü-vn] proving 1: to test the truth, validity, or genuineness of [a will at probate] 2 a: to establish the existence, truth, or validity of ...

#### **Provision**

a stipulation (as a clause in a statute or contract) made beforehand

#### **Provisional**

1: provided for a temporary need: suitable or acceptable in the existing situation but subject to change or nullification [a government] [custody of a minor] 2: of, relating to, or being ...

#### **Proviso**

pl: -sos or: -soes [Medieval Latin proviso quod provided that] 1: an article or clause (as in a statute or contract) that introduces a condition 2: a conditional stipulation

#### **Provocation**

1: the act of provoking 2: something that provokes, arouses, or stimulates

#### Provoke

pro·voked pro·vok·ing 1 : to incite to anger 2 : to provide the needed stimulus for pro·vok·er n

#### **Proximate**

1: next immediately preceding or following (as in a chain of causation, events, or effects): being or leading to a particular esp. foreseeable result without intervention see also proximate cause...

#### **Proximity**

the quality or state of being proximate

#### **Proxy**

pl: prox·ies [Middle English procucie, contraction of procuracie, from Anglo-French, from Medieval Latin procuratia, alteration of Latin procuratio appointment of another as one's agent]

#### **Proxy Contest**

a shareholder's challenge to an action or the control of corporate management accomplished through the solicitation of proxies from other shareholders called also proxy fight

#### **Proxy Marriage**

a marriage performed in the absence of either the bride or groom who authorizes a proxy to represent him or her at the ceremony

#### **Proxy Statement**

a document containing information about a proposed corporate action that the corporation is required to submit to shareholders for their vote on the action

#### Prr

potentially responsible party used esp. in environmental law

#### **Prudence**

attentiveness to possible hazard : caution or circumspection as to danger or risk [a person of ordinary]

#### Pruden

characterized by, arising from, or showing prudence prudently adv

#### Prudent Man Rule

a rule giving discretion to a fiduciary and esp. a trustee to manage another's affairs and invest another's money with such skill and care as a person of ordinary prudence and intelligence would ...

#### Prurient

marked by or arousing an unwholesome sexual interest or desire pruriently adv

#### **Pseudo Mark**

A way of locating a word mark that is comprised of an alternative or intentionally corrupted spelling of an English word. The pseudo mark search locates spellings that are very similar or phonetically...

#### **Public**

1 a: exposed to general view [indecency] b: known or recognized by many or most people 2 a: of, relating to, or affecting all of the people or the whole area of a nation or state [statutes]

#### **Public Accommodations**

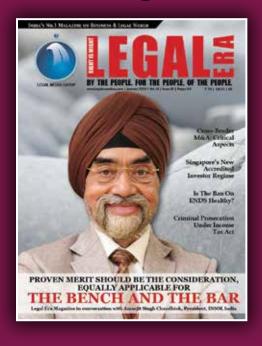
Federal and state laws prohibit discrimination against certain protected groups in businesses and places that are considered "public accommodations." The definition of a "public accommodation" may ...

#### **Public Act**

public law

#### 

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Company: Infiniti Retail Ltd.

Exp: 4-5

Location: Mumbai Job Id: 191218005130

## TAX LAW - CONFIGURATION EXECUTIVE - ASST. MANAGER

Company: Eygbs India LLP

Exp: 6-10

Location: Bengaluru/Bangalore

Job Id: 090119901416

#### CMC - REGULATORY AFFAIRS -EU MARKET (FORMULATIONS)

Company: Aurobindo Pharma Ltd.

Exp: 2-5

Location: Hyderabad/Secunderabad

Job Id: 090119007309

#### MANAGER/SENIOR MANAGER/ LEGAL COMPLAINCE

Company: Suche Consultants

Exp: 5-10

Location: Mumbai Job Id: 100119900127

#### **LEGAL MANAGER**

Company: Leena Power Tech Engineers Private Limited

Exp: 5-9

Location: Mumbai Job Id: 251218000664

#### **API - REGULATORY AFFAIRS**

Company: Mankind Pharma Ltd.

Exp: 5-10

Location: Gurgaon Job Id: 090119006989

#### VIGILANCE OFFICER

Company: Ujjivan Small Finance

Bank limited Exp: 1-5

Location: Ajmer Job Id: 100119900035

#### L.L.B

Company: Kumar Vijay Gupta Co.

Exp: 2-7

Location: Delhi/NCR Job Id: 090119008038

#### **LEGAL ADVISOR**

Company: Huijin Electronic India

Private Limited

Exp: 0-5

Location: Ranchi Job Id: 090119006661

#### ASSOCIATE MANAGER - LEGAL

Company: GMR Delhi International

Airport Limited

Exp: 4-9

Location: Delhi/NCR Job Id: 111218007188

#### MANAGEMENT TRAINEE

Company: Piaggio Vehicles Pvt. Ltd.

Exp: 0-2

Location: Pune

Job Id: 090119007138

#### CORPORATE LEGAL & FEMA EXPERT

Company: HRD House

Exp: 5-10

Location: Mumbai Job Id: 090119004757

#### ASSOCIATE -SPECIALIST (LEGAL)

Company: Novus Professional

Services Pvt. Ltd.

Exp: 2-7

Location: Gurgaon Job Id: 100119000501

#### ASSISTANT MANAGER - LEGAL

Company: Krsnaa Diagnostics Pvt.

Ltd.

Exp: 3-4

Location: Pune

Job Id: 090119007057

#### LEGAL EXECUTIVE

Company: ThyssenKrupp Elevator

(India) Pvt. Ltd.

Exp: 1-3

Location: Pune

Job Id: 090119006039

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Exp: 4-8

Location: Pune

Job Id: 090119002560

#### CORPORATE LEGAL MANAGER

Company: Ess Kay Fincorp Limited

Exp: 2-7

Location: Jaipur

Job Id: 261018009495

#### ADVOCATE RETAINER

Company: The Indian Express

Private Limited

Exp: 3-8

Location: Mumbai Job Id: 090119006000

#### MANAGER LEGAL OPERATION

Company: AU Small Finance Bank

Limited Exp: 3-8

Location: Mumbai Job Id: 040119006194

#### LEGAL EXECUTIVE

Company: QX Global Services LLP

Exp: 0-3

Location: Ahmedabad Job Id: 080119007706

#### ASSISTANT MANAGER LEGAL

Company: Isha Natural Beauty Products & Wellness Pvt. Ltd.

Exp: 4-6

Location: Gurgaon Job Id: 201218001261

#### **LEGAL EXECUTIVE**

Company: Searce

Exp: 1-6

Location: Pune

lob ld: 080119003793

#### DEPUTY GENERAL MANAGER - LEGAL

Company: Tops Security Limited

Exp: 8-12

Location: Mumbai Job Id: 151117006701

## EXECUTIVE/SR. EXECUTIVE - LEGAL

Company: V2 Retail Limited

Exp: 1-3

Location: Delhi/NCR Job Id: 090119003978

#### **LEGAL EXECUTIVE**

Company: Haicheng Vivo Mobile

India Pvt. Ltd.

Exp: 1-3

Location: Delhi/NCR Job Id: 231018005166

#### COUNSELLOR

Company: Markone Technocoms

Pvt. Ltd. Exp: 2-5

Location: Delhi

Job Id: 080119007589

#### **LEGAL EXECUTIVE**

Company: GEMS Education Solutions India Private Limited

Exp: 2-3

Location: Bengaluru/Bangalore

Job Id: 090119003245

#### ADVOCATE LAWYER

Company: Allstate Group

Exp: 3-5

Location: Mumbai Job Id: 080119009195

#### AM - LEGAL

Company: Walplast Products

Pvt. Ltd. Exp: 2-7

Location: Navi Mumbai Job Id: 221218003843

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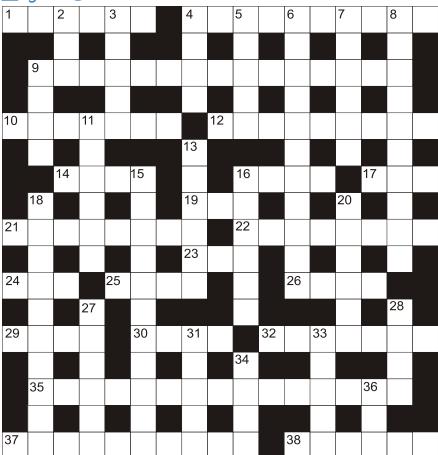






## MIND-BOGGLING

## Legal Crossword



Nitaa Jaggi

## Sudoku

	1		7	3				4	
		2					5	9	
			9	2		3			
	5			9	1				
			4		8				
			5	7			9		
		9		1	2				
8	6					7			
2				5	7		4		

For answers to the Crossword & Sudoku puzzle, turn to Legal Precepts section on page no. 76

### **ACROSS**

- 1. Resolve (6)
- 4. Replaces to former state (10)
- 9. 'Knife' under section 326 IPC (9,6)
- 10. Risked (2,5)
- 12. Nominee endorsers in Britain (9)
- 14. Family business abbr. (4)
- 16. Deception (4)
- 17. Bank cash site (3)
- 19. Value added tax (3)
- 21. Declaim or verbal protest (8)
- 22. Conventional rules (8)
- 23. Mr. Shastri-3rd PM of India (3)
- 24. In addition (3)
- 25. Smaller amount (4)
- 26. Vociferate (4)
- 29. Take- loan-borrow money (3,1)
- 30. Prefix for legal (4)
- 32. Burglar (7)
- 35. IPC (6,5,4)
- 37. Covenant (10)
- 38. Bits of evidence (6)

### **DOWN**

- 2. Spy org. (3)
- 3. Doctrine (5)
- 4. Communal violence (4)
- 5. Acapulco agreements (5)
- 6. Not gracefully (11)
- 7. Arrogant (6)
- 8. Acquittal (10)
- 9. Court---- (4)
- 11. Hellion (6)
- 13. Mallets for judges (6)
- 15. Writer of 'The Merchant of Venice'play based on Venetian justice (11)
- 16. Goods recovered by the police (6)
- 18. Denouement (10)
- 20. Track a case (6)
- 27. Family court in Mumbai (6)
- 28. Give away (4)
- 31. Indian currency mark used on stamp paper (5)
- 33. Transpire (5)
- 34. Tie-up as in marriage (4)
- 36. Medico (3)

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