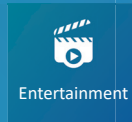




COMPETITION LAW & POLICY NEWSLETTER

Quarter 1 of 2024

SECTORS COVERED IN THIS ISSUE



KEY ENFORCEMENT MATTERS

- CCI launches an investigation against Google for its Play Store billing policies.

OTHER DEVELOPMENTS

- The CCI publishes market study report on the dynamics of competition in the mining sector in India with a focus on iron ore.

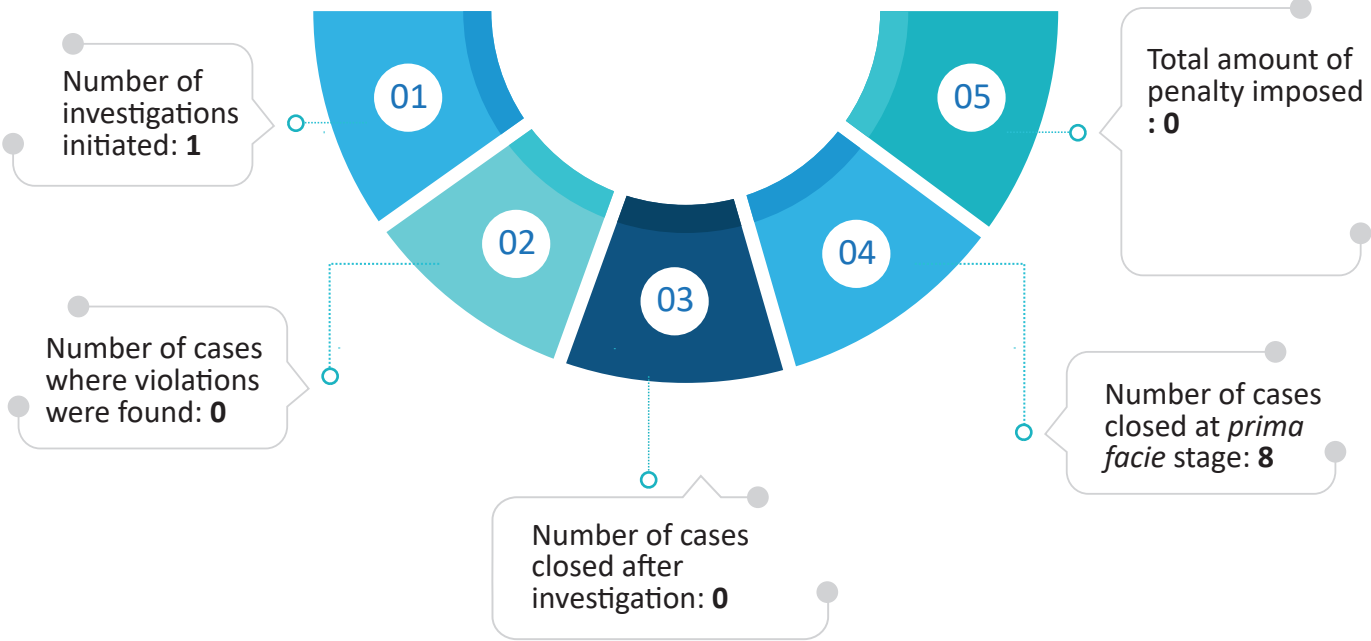
INSIDE

STATUTORY DEVELOPMENTS

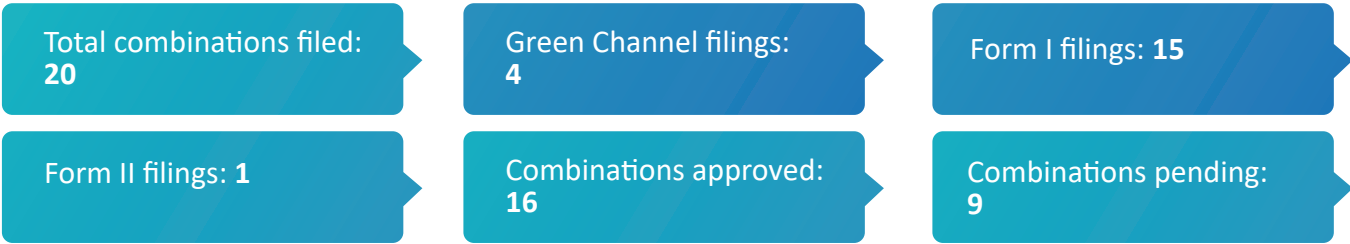
- The MCA publishes Report of the Committee on Digital Competition Law and the Draft Digital Competition Bill, 2024.
- The MCA publishes draft rules on *de minimis* exemption, green channel route for merger filing and exemptions for certain transactions from notification to the CCI for stakeholder consultation.
- The CCI publishes amendments to its General Regulations, inviting comments from stakeholders.
- The CCI publishes regulations for the lesser penalty applications.
- The CCI publishes regulations governing settlement and commitment applications.
- The CCI publishes regulations for determination of turnover or income of enterprises.
- The CCI publishes guidelines for determination of monetary penalties under the Competition Act, 2002.

A QUICK SNAPSHOT

Enforcement Matters



Mergers & Acquisitions



ENFORCEMENT UPDATES

#1 The CCI launches an investigation against Google for its Play Store billing policies.

On March 15, 2024, the Competition Commission of India (CCI) issued an order under Section 26(1) of the Competition Act, 2002 (Act), launching a new investigation against Alphabet Inc., Google LLC, Google India Pvt. Ltd., Google India Digital Services Pvt. Ltd., Google Asia Pacific Pte. Ltd., and Google Ireland Ltd. (collectively, Google) filed by People Interactive India Private Limited, Mebigoo Labs Private Limited, Indian Broadcasting and Digital Foundation, and Indian Digital Media Industry Foundation (collectively, Informants) (CCI Order). The Informants alleged that Google abused its dominant position in the market for app stores for the Android operating system (OS) in India through its billing practices. Key allegations include:



Mandatory use of Google Play Billing System (GPBS) reduced competition: Google required app developers to use its GPBS for all in-app purchases (IAP) and paid apps on the Play Store. The mandatory use of GPBS restricts app developers' ability to choose alternative billing systems (ABS), which potentially led to a reduction in competition and higher prices for consumers.



High commissions on purchases: Google charged app developers an exorbitant commission of 15% to 30% on all transactions processed through GPBS. Google's excessive commissions on purchases ate into app developers' profits and thus, hindered innovation and investments.



User Choice Billing (UCB) system was ineffective: Google introduced the UCB system in 2022, which allowed developers to offer payments through ABS alongside GPBS with a reduced commission rate payable to Google. Informants argued that the UCB failed to address their concerns in an effective manner and limited user choice for payment methods because the commission rate was only reduced by 4%.

The CCI Order stated that Google violated the provisions of Sections 4(2)(a), 4(2)(b), and 4(2)(c) of the Act. The CCI made the following key observations in the CCI Order:

01

Relevant Markets: The CCI defined the relevant markets as the 'market for licensable OS for smart mobile devices in India' and 'market for app store for Android smart mobile OS in India.'

02

Google imposed an unfair price on app developers: The CCI noted that app developers regarded the Play Store as a 'must have' app for reaching the Android user base. Since the Play Store revenue model favored Google due to the mandatory use of GPBS, app developers had to allocate a high proportion of their revenue towards commission/ service fee to Google (up to 30%). Therefore, the CCI noted that Google imposed an unfair price on the Informants in violation of Section 4(2)(a)(ii) of the Act.

03

Google constrained the growth of the app market: The CCI noted that the imposition of higher service fee by Google resulted in app developers having fewer resources to enhance or develop their app offerings, which constrained the growth of the app market, and thus, was violative of Section 4(2)(b)(ii) of the Act.

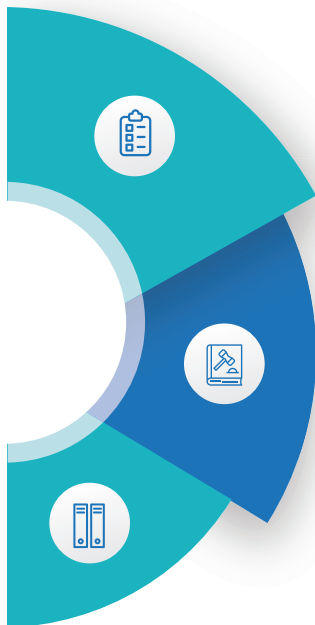
04

Google's policies resulted in creating high entry barriers and denial of market access: The CCI noted that Google's imposition of unfair service fee on app developers could force them to exit the market or deter new entrants from entering the market due to increased operational costs. The CCI also observed that Google's discriminatory and disproportionate service fee on developers offering paid downloads and IAP appeared to diminish incentives for app monetization and paid app development resulting in denial of market access under Section 4(2)(c) of the Act.

05

Google arbitrarily distinguished between Digital Delivery Apps¹ and Physical Delivery Apps²: The CCI noted that despite the same developer source, discovery and distribution services, Google was found to be discriminating between the apps by applying a service fee on Digital Delivery Apps but not on Physical Delivery Apps. Google was also found to discriminate amongst similarly placed apps in the OTT industry. Thus, the CCI found these practices to be in violation of Section 4(2)(a) of the Act.

On March 20, 2024, the CCI passed an order (**Interim Relief Order**) dismissing Informant's prayers for interim relief and noted the following:



There was no corresponding direction for investigation of conduct against which the interim relief prayers were made;

The Informants failed to meet the higher level of a prima facie case for grant of interim relief and how the alleged conduct had caused irreparable harm to the Informants; and

The relief sought by the Informants would essentially require Google to offer its services to developers in India for free, which was disproportionate at that stage.

The CCI Order can be accessed [here](#) and the Interim Relief Order can be accessed [here](#).

¹ Digital Delivery Apps are apps offering digital content/services, for example, dating apps enabling users to connect with others digitally and then meet in person, are considered as offering digital content/services by Google.

² Physical Delivery Apps are apps that offer digital goods and services for purchase, for example, apps providing transportation services (like Uber and Ola), online shopping (like Amazon and Flipkart), food ordering (like Zomato and Swiggy), or home services (like Urban Company) allow users to connect with and book the service providers in the physical world.

Quick bites on CCI's Closure Orders under Section 26(2) of the Act:

In Re: Yogesh Pratap Singh v. PVR Limited

On January 3, 2024, CCI dismissed an information filed by Mr. Yogesh Pratap Singh, an independent filmmaker, against PVR Limited (**PVR**) for discriminatory and preferential allocation of its screens to films of large production houses. The CCI dismissed the information on the following grounds:

- Exhibitors like PVR possess commercial wisdom which is governed by the consumer demand. A regulator's intervention without any anti-competitive effects may take away the autonomy of enterprises.
- There is no absolute right to deal and thus the right to choose movies for exhibition lies with PVR.

In Re: XYZ v. Ola Electric Limited & Ors.

On January 23, 2024, the CCI dismissed anonymous information against Ola Electric Ltd., VIDA Hero Moto Corp Limited, TVS Motors, and Ather Energy Pvt. Ltd. (collectively, **OPs**) which alleged that the OPs were abusing their dominant position by taking undue advantage of a government policy providing certain subsidies to consumers and electric two wheeler (**ETW**) manufacturers. The CCI dismissed the information on the following grounds:

- The market for manufacturing and sales of ETWs is still growing with the entry of new players.
- None of the OPs have market power as the market shares are unstable and therefore not dominant.

STATUTORY DEVELOPMENTS

#1 The Ministry of Corporate Affairs publishes the Report of the Committee on Digital Competition Law and the Draft Digital Competition Bill, 2024.

On March 12, 2024, the Ministry of Corporate Affairs, Government of India (**MCA**), published the Committee on Digital Competition Law (**CDCL**) report (**CDCL Report**) and the Draft Competition Bill (**DCB**). The MCA appointed the CDCL to review the Act and assess the need for separate legislation governing the digital sector in India. After a round of stakeholder consultations and deliberations, the CDCL concluded that the Act is not sufficient to address the entire gamut of concerns in the digital sector and suggested an *ex-ante* framework. The CDCL noted that:

01

An *ex-post* approach is time-consuming and does not always lead to optimal market correction in rapidly evolving markets.

02

An *ex-ante* approach is likely to bring administrative efficiencies as well.

03

An *ex-post* approach addresses only narrow claims.

04

An *ex-post* approach needs the support of an *ex-ante* framework since there is no sectoral regulator for the digital sector in India.

Scope: The DCB would apply to enterprises providing ‘Core Digital Services’ (**CDS**) that meet the prescribed criteria and qualify as ‘Systemically Significant Digital Enterprise’ (**SSDE**). The following have been categorized as CDS: (a) online search engines; (b) online social networking services; (c) video-sharing platform services; (d) interpersonal communications services; (e) operating systems; (f) web browsers; (g) cloud services; (h) advertising services; and (i) online intermediation services.

Prescribed Criteria for SSDEs: An enterprise providing CDS which meets the below thresholds may be designated as SSDE:

SIGNIFICANT FINANCIAL STRENGTH TEST	
Parameter	Applicable threshold
Turnover in India	≥ INR 4000 crores (~USD 482 million), or
Global Turnover	≥ USD 30 billion, or
Gross Merchandise Value	≥ INR 16000 crores (~USD 1.93 billion), or
Global Market Capitalisation	≥ USD 75 billion or its equivalent fair value of more than USD 75 billion calculated in any manner prescribed.

SIGNIFICANT PRESENCE TEST	
Parameter	Applicable threshold
End user base in India	≥ 1 crore, or
Business user base in India	≥ 10,000

If an enterprise meets the criteria for qualifying as an SSDE in respect of one or more CDS, the DCB mandates that it must notify the CCI within 90 days of meeting the criteria, including in relation to other enterprises in its group that are directly or indirectly involved with one or more CDS. Such related enterprises would be categorized as an ‘Associate Digital Enterprise’ (**ADE**).

- **Obligations under DCB for SSDE/ADE:** There are three set of obligations that SSDE/ADE need to comply with once DCB is enforced:
 1. **Obligations enlisted in the DCB:** SSDEs/ADEs must operate in a fair, non-discriminatory, and transparent manner with end users and business users. Each SSDE/ADE must comply with anti-steering, anti-circumvention, and data usage obligations. It must not indulge in tying/bundling, self-preferencing or restricting distribution of third-party applications.
 2. The DCB allows the CCI to specify differential obligations for various SSDEs based on factors, including the nature of the market and the number of users in India.
 3. The DCB may also specify differential obligations for SSDEs and their ADEs.
- **High fines under the DCB.** The DCB imposes very high penalties ranging from 1% of the global turnover of an enterprise for failing to self-report to the CCI to 10% of the global turnover of an enterprise for non-compliance with the obligations of the DCB, its rules and regulations.

For more details, please see our update [here](#). The CDCL Report and the DCB can be accessed [here](#).

#2 The CCI introduces amendments to the General Regulations to boost its enforcement proceedings.



On December 12, 2023, CCI published the draft CCI (General) Amendment Regulations, 2023, (**Draft Amended Regulations**) seeking comments from the stakeholders.



The Draft Amended Regulations introduce changes in the procedure for formation of a confidentiality ring in CCI's enquiries to streamline the process and prevent delays in disposal of cases.



The Draft Amended Regulations also introduce the following;

- increase in the fee for inspection of case records,
- stricter timelines for submission of undertakings of proposed members of a confidentiality ring, and
- submission of affidavits along with undertakings.

The proposed amendments can be accessed [here](#).

#3 The MCA notifies important amendments to the provisions of the Act.

The MCA notified certain important amendments to the Act pertaining to commitments and settlements regime, lesser penalty, merger thresholds, penalty regulations and the turnover or income regulations. A detailed update prepared by us is available [here](#).

#4 The MCA published draft rules on *de minimis* exemption, green channel route for merger filing and exemptions for certain transactions from notification to the CCI for consultation.

On March 11, 2024, the MCA published three new sets of draft CCI (*De Minimis*) Rules, 2024 (**Draft DMR**), draft CCI (Green Channel)) Rules, 2024 (**Draft GCR**) and Draft CCI (Exempted Combinations) Rules, 2024 (**Draft ECR**) (collectively, **Rules**) under the Act (as amended) for public consultation.

- The Draft DMR proposes to bring the existing *de minimis* exemption (i.e., assets < INR 450 crores or turnover < INR 1250 crores (as set out in the MCA notification dated March 07, 2024 (**De Minimis Notification**)) within the ambit of rule making power of the central government in line with Section 63 of the Act (covered in our detailed update [here](#)).
- The Draft GCR proposes to codify the terms and procedure for filing a green channel notification to the CCI, which is presently covered under the CCI (Procedure in Regard to the Transaction of Business Relating to Combinations) Regulations, 2011 (**Combination Regulations**). The GCR also propose to modify the definition of an "affiliate" as follows:

Old criteria for the “Affiliate” test	New criteria for the “Affiliate” test
Direct or indirect shareholding of 10% or more; or	10% or more of the shareholding or voting rights of the enterprise; or
Right or ability to nominate a director or observer to the board; or	Right or ability to have a representation on the board of directors of the enterprise either as a director or as an observer; or
The right or ability to exercise any special right (including any advantage of a commercial nature with any of the party or its affiliates), not available to an ordinary shareholder.	The right or ability to access commercially sensitive information (CSI) of the enterprise.

- On 5 September 2023, the CCI published the draft CCI (Combination) Regulations, 2023 (**Draft Combination Regulation**) for public consultation which will replace the present Combination Regulations upon its finalization. These Draft Combination Regulations, in addition to implementing new provisions, propose to delete Schedule I of the existing Combination Regulations which provides for certain categories of transactions which would be exempted from notification to the CCI. The Draft ECR proposes to re-introduce and modify the exemptions provided in Schedule I of the Combination Regulations. The key changes are as follows:

- Transactions in the ordinary course of business (OCB):** The following acquisitions will be considered to be in the OCB:

- acquisition of less than 25% of the total shares or voting rights of a target enterprise by an underwriter or a stockbroker; and
- acquisition of less than 10% of the total shares or voting rights of a target enterprise by a mutual fund.

- Transactions to qualify as solely as an investment (SAI):** Acquisition of shares or voting rights of less than 25% of a target enterprise not leading to acquisition of control of a target enterprise would qualify as SAI if:

- the acquirer does not acquire the right to appoint a director or an observer on a target enterprise;
- the acquirer does not acquire the right or ability to access the CSI of a target enterprise; and
- there are no horizontal, vertical or complementary overlaps between the business activities of the acquirer group (including its affiliates) and the target enterprise (including its affiliates) in India. It is clarified that, in case of acquisition of less than 10% of the total shares or voting rights of a target enterprise, the CCI will not consider the overlaps between the parties.

- Acquisition of additional shareholding:** The Draft ECR proposes to exempt acquisition of additional shares or voting rights by an existing shareholder or its group if:

- Acquisition does not lead to more than 25% shareholding/ voting rights given that the acquirer or its group (i) post the acquisition, holds less than 25% shares or voting rights of a target enterprise; and (ii) does not acquire control of a target enterprise. In case of overlaps between the business of the parties, this exemption will be available if the additional acquisition by a single or a series of smaller acquisitions does not exceed 5%, however, the exemption will not be available if the additional acquisition does not

exceed 5% but the shareholding of the acquirer or its group increases from less than 10% prior to the acquisition, to 10% or more after the acquisition.

- b. Acquirer or its group holds 25% or more prior to acquisition but additional acquisition not leading to 50% or more shareholding/ voting rights, provided the acquisition does not result in change in control of a target enterprise.
- c. Acquirer or its group holds 50% or more prior to acquisition and is acquiring additional shareholding or voting rights, provided the acquisition does not result in change in control of a target enterprise.

- **Acquisition of assets:** The Draft ECR proposes to exempt acquisition of:

- a. current assets (*such as stock-in-trade, raw materials, stores and spares, trade receivables, etc.*) or other similar current assets that do not constitute business of the parties;
- b. assets not related to acquirer's business activity or made SAI, not leading to control of a target enterprise selling the assets, provided these assets do not represent the substantial business operations of a target enterprise.

- **Rights/ bonus issue, buyback and stock splits:** The Draft ECR proposes to exempt acquisition of shares pursuant to bonus issue, stock splits, consolidation of the face value of shares, buybacks or rights issue provided that such acquisition does not result in change in control of a target enterprise.

- **Intra-group transactions:** The Draft ECR proposes to exempt intra-group (i) mergers and amalgamation; and (ii) asset acquisitions, provided that there is no change in control of a target enterprise.

- **Demergers:** The ECR proposes to exempt the subsequent issuance of shares to existing shareholders pursuant to a demerger i.e., the resulting company issues shares to the demerged company (or its shareholders) in proportion to their existing shareholding in the demerged company.

- **Acquisition approved by the CCI:** The Draft ECR proposes to exempt acquisition of shares, control, voting rights or assets by a purchaser approved by the CCI in accordance with its order directing remedies/ modifications.

The draft Rules can be accessed [here](#) (Draft DMR), [here](#) (Draft GCR) and [here](#) (Draft ECR).

OTHER DEVELOPMENTS

#1 The CCI publishes a market study report on the dynamics of competition in the mining sector in India with a focus on iron ore.

On January 29, 2024, the CCI published a market study report (**Report**) prepared by the Institute for Studies in Industrial Development examining competition issues in the Indian mining sector with a focus on iron ore.



Iron Ore Production and Reserves:

India is the world's fourth-largest producer of iron ore, accounting for 7% of global production. The sector was noted to be dominated by public sector companies, contributing 39% of iron ore mining, while the private sector held the remaining 61%, making India self-sufficient in iron ore production.



Market Concentration:

The Report noted National Mineral Development Corporation and Odisha Mining Corporation (**OMC**) controlling 65% of the market share as two key players in the iron ore mining segment. The Report also noted that there is a regional concentration of iron ore production in India, where Odisha accounts for more than half of India's total iron ore production (54%).

Observations and recommendations:

The Report highlighted areas for improvement in the regulatory framework, including streamlining the mining lease auction process and rationalizing the tax regime for the mining sector to promote competition.

- **Streamlining the mining lease auction process:** There was a decline in the allocation of mining leases post the implementation of the Mines and Minerals (Development and Regulation) Act, 2015. Entry barriers and increased compliance costs were attributable to extensive compliance requirements. Thus, the Report recommended a separate auction for different categories of end users in Odisha to solve the problem of the same auction process for various products, ranging from steel to pellets, between small and bigger plants in Odisha.
- **Single e-auction process for all iron ore mines in Odisha:** The Report observes that OMC pricing, distribution of iron ore and its involvement in the auction process may breach Section 4(2)(a)(i) and 4(2)(a)(ii) of the Act on account of high prices and discriminatory distribution of iron ore. To address these concerns, the Report recommends a single-e-auction process for all iron ore producers and merchant miners in Odisha.
- **Rationalizing the tax regime for the mining sector:** The Report found that the effective tax rates and the royalty payments for iron ore in India were much higher than in most mineral-rich countries, which resulted in an increase in cost and a pass-through effect on steel pricing.
- **Promoting greater competition in the iron ore sector:** The Report found that the share of captive iron ore mines in the total number of iron ore mines had gradually increased over the years, creating competition concerns due to differential cost structure amongst steel producers with and without captive mines.
- The Report recommends prioritisation of export of value-added products derived from iron ore rather than export of iron ore.
- The Report emphasized on imposition of a suitable maximum limit on iron ore ownership, transition to clean technology, sustainable mining initiatives and reduction in exports of iron ore to better achieve the objectives of the Government of India's *Atma Nirbhar Bharat* initiative.

The Report can be accessed [here](#).



**ECONOMIC
LAW
PRACTICE**
ADVOCATES & SOLICITORS

MUMBAI

9th Floor, Mafatlal Centre
Vidhan Bhavan Marg
Nariman Point, Mumbai 400 021
T: +91 22 6636 7000

DELHI NCR

NOIDA

9th Floor, Berger Tower, Sector 16 B,
Noida, Uttar Pradesh - 201301.
T: +91 120 6984 300

NEW DELHI

DR Gopal Das Bhawan, 16th Floor,
28, Barakhamba Road,
New Delhi – 110 001.
T: +91 11 41528400

AHMEDABAD

C-507/508, 5th Floor, Titanium Square
Thaltej Cross Roads, SG Highway,
Ahmedabad - 380054
T: +91 79460 04854

PUNE

202, 2nd Floor, Vascon Eco Tower
Baner Pashan Road
Pune 411 045
T: +91 20 4912 7400

BENGALURU

6th Floor, Rockline Centre
54, Richmond Road
Bengaluru 560 025
T: +91 80 4168 5530/1

CHENNAI

No 18, BBC Homes, Flat-7 Block A
South Boag Road
Chennai 600 017
T: +91 44 4210 4863

GIFT CITY

GIFT CITY Unit No. 605,
Signature, 6th Floor Block 13B,
Zone – I GIFT SEZ, Gandhinagar 382355

 elplaw.in

 insights@elp-in.com

 [/elplaw.in](https://www.facebook.com/elplaw.in)

 [/ELPIndia](https://twitter.com/ELPIndia)

 [/company/economic-law-practice](https://www.linkedin.com/company/economic-law-practice)

 <https://elppodcast.buzzsprout.com/>

DISCLAIMER:

The information contained in this document is intended for informational purposes only and does not constitute legal opinion or advice. This document is not intended to address the circumstances of any particular individual or corporate body. Readers should not act on the information provided herein without appropriate professional advice after a thorough examination of the facts and circumstances of a particular situation. There can be no assurance that the judicial/quasi judicial authorities may not take a position contrary to the views mentioned herein.