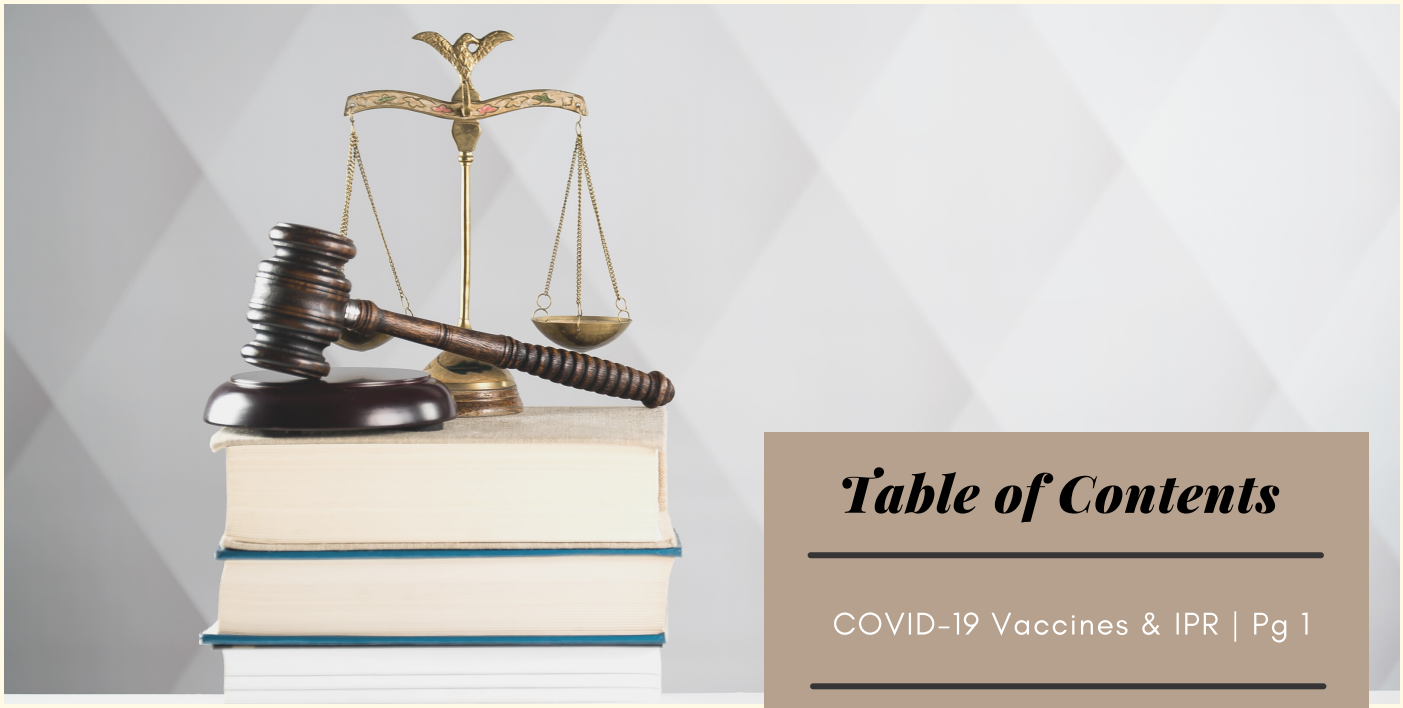
Legacy® LAW OFFICES

APRIL-JUNE 2021 | EDITION II

THE LEGACY OUTREACH

A Quarterly Round Up

April- June 2021



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Lets Fight COVID-19 Together Stay Strong!

COVID-19 VACCINES & INTELLECTUAL PROPERTY LAWS

Recently, the United States of America, in a reversal of its earlier stance, has come in support of India & South Africa's proposal (October 2020) made before the World Trade Organisation (WTO)for waiving intellectual property (IP) protections for Covid-19 related innovations. The said announcement by the US is significant as it may lead to a unison of voices supporting the proposal for effectuating the waiver of IP rights provisions under the Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement. For having any waiver of the provisions of the TRIPS Agreement, there needs to be a consensus by the 64 member countries of the WTO.

PATENT PROTECTION & THE PROPOSED WAIVER

As the world grapples with the Covid-19 pandemic, the vaccines, drugs and other treatments that have been innovated and developed for combating the virus and its variants are subject to patent protection and other similar IP protection under the TRIPS Agreement.

In respect of patents relating to the Covid-19 vaccines or drugs, a right holder has the exclusive right to manufacture, sell, and use the vaccine or the drug for the entire term of patent protection of 20 years from the date of the filing of the patent application. A patent, therefore, represents a powerful intellectual property right which is an exclusive monopoly granted to an innovator/ inventor. Patenting provides an enforceable legal right to the right holder for preventing others from copying the invention.

"The proposal for the waiver by India and South Africa seeks for a waiver on the implementation, application and enforcement of certain Articles of the TRIPS Agreement, namely Article 1 relating to copyrights, Article 4 which cover industrial designs, Article 5 on patent rights and Article 7 regarding the protection of undisclosed information. The proposal states that unless the waiver is accorded, developing countries would especially face institutional and legal difficulties when using the available TRIPS flexibilities."

Legal snippets

Insurance (Amendment) Act, 2021 receives President's assent

The Insurance (Amendment) Act, 2021 shall come into force, once notified in the official gazette. The Act increases the Foreign Direct Investment (FDI) limit in the sector to 74 percent and removes restrictions on ownership and control. However, such foreign investment may be subject to additional conditions as prescribed by the Central Government.

The Bill increases the limit on foreign investment in an Indian insurance company from 49% to 74%, and removes restrictions on ownership and control. However, such foreign investment may be subject to additional conditions as prescribed by the central government.

As such most of the vaccine production is currently concentrated in high-income or developed countries and production by middle-income or developing countries has been happening through voluntary licensing or technology transfer agreements. The proposed waiver could allow the production of Covid-19 vaccines such as those developed by Pfizer, Moderna, AstraZeneca, Novavax, Johnson & Johnson and Bharat Biotech with emergency use authorizations on a larger scale in middle-income countries in order to achieve universal vaccination.

IMPEDIMENTS TO THE WAIVER

Certain pharmaceutical companies including Pfizer and AstraZeneca have opposed the proposed waiver. They argue that eliminating the IP protections would "undermine the global response to the pandemic", including the ongoing efforts to tackle new variants.

It is further argued that waiving IP protections could also create confusion which could potentially undermine public confidence in vaccine safety, create a barrier to information sharing and most importantly eliminating protections would not speed up the production of vaccines and associated drugs.

Additionally, developing a vaccine philanthropically is uncommon and might face numerous roadblocks due to the magnitude of investments required. For innovating, the pharmaceutical companies incur huge costs towards R&D (research and development), testing, clinical trials, etc. before taking the drug to the market. The patents and other IP systems as aforesaid allow for the innovation to generate large profits for the companies as monetary benefits are the ultimate incentive for any innovation.

As developing a vaccine is a high-cost process requiring numerous tests and trials, particularly during late-stage clinical trials, as such, there would not be any incentive for developing the vaccines or drugs without there being a clear return on investment for the pharma companies.

ARGUMENTS IN SUPPORT OF THE WAIVER

The opposition for waiver of the IP protections is untenable and is not sustainable. In a global health crisis requiring efforts from all sections and countries, the argument that suspending the IP protections would dis-incentivize the pharmaceutical sector is inaccurate. As there is a huge demand, the world over, for the vaccines and associated drugs and treatment for the Covid-19 and its various variants, the pharma companies are guaranteed high returns to their products.

Moreover, such pharmaceutical companies have often benefitted from public money and government grants, including for the development of the Covid-19 vaccines since the first wave in 2020. Therefore, it is a legitimate expectation that the innovations and technologies developed should be shared for the greater benefit of the society at large and not be seen as a monopolistic profit-making opportunity.

In addition to the above, the arguments that developing countries like India will have the capacity and quality monitoring issues are un-substantiated. While quality can always be assessed, the stated arguments go against earlier moves towards a patent regime that is prevailing for generic drugs in India.

The year 2021 began with the singular aim of the global community of ending the Covid-19 pandemic. This can only be possible if people all over the world are vaccinated, and as quickly as possible. There is therefore a heightened need for aggrandizing the existing capacities in developing countries while allowing swift technology transfers for critical Covid-19 vaccines and drugs by pharmaceutical companies from the developed countries.

CONCLUSION

The proposed waiver seeks not just the IP protection waiver on vaccines but also medicines and other technologies related to the treatment of the Covid-19 virus. The USin its latest announcement has considerably narrowed down the scope of the waiver by restricting the same only to vaccines. Drugs and medicines and other technologies that are critically important in treating Covid-19 must also be granted a waiver. While at the same time efforts need to be made for ramping up the production of vaccines and building institutional capacity in numerous countries by undertaking necessary reforms in the administrative machinery and the legal framework for overcoming systemic bottlenecks.

Given the lethality of the Covid-19 virus and the debilitating effects of the ever-transforming variants, there is an enormous demand for increasing the production of vaccines, drugs and medicines and ensuring its equitable distribution both to the developed as well as the developing countries, alike. While an IP waiver under the TRIPS Agreement may not singly accomplish such an objective, nevertheless, a waiver would be an important step in enhancing the production of the vaccines and making them available at affordable prices to every person, the world over.

CONTOURS OF THE DRAFT EIA NOTIFICATION, 2020

Legal snippets

"Right Of A Person In Detention To Consult Lawyer Of His Choice Is A Constitutional Right, State Can't Dilute It": Delhi HC Grants Relief

Observing that it is the constitutional right of a person in detention to consult with the lawyer of his choice which cannot be diluted by the State, the Delhi High Court has last week granted relief to Shifa Ur Rehman, President of the Alumni Association of the Jamia Milia Islamia, arrested charged under UAPA in connection with the Delhi Riots that broke out in the national capital last year.

On March 12, 2020, the Ministry of Environment, Forest and Climate Change ("MoEFCC") published a new draft Environment Impact Assessment (EIA) 2020 ("EIA Notification 2020") and sought comments from the public for the same. If put into force, the EIA Notification 2020 shall replace the existing regime of the EIA process as provided under the EIA Notification 2006 in respect of all future projects.

The MoEFCC states that it has received over 17 lakh objections, comments and suggestions from the public in this regard. Concerns have been raised by the public on various issues in the EIA Notification 2020, such as the introduction of a new provision for post-facto environmental clearance (for projects that are executed without a prior clearance), reducing the notice period for public hearings, an extension of time for submitting compliance reports by project proponents, etc. which may weaken the environmental protections and safeguards as provided under the existing regime.

FEATURES OF THE EIA NOTIFICATION 2020

- Types of Approvals Under the EIA Notification 2020, there are two types of approvals, prior environmental clearance (prior-EC) and prior environmental permission (prior-EP) whereas under the EIA Notification 2006 only the former had been provided.
- Categories of projects: While both EIA Notification 2006 and EIA Notification 2020 categories' projects fall into Category A, Category B1 and Category B2 projects, however, the former did not classify clearly the projects falling under B1 and B2 Categories.
- Exemption of projects from prior-EC or prior-EP: As per the EIA Notification 2020, there are about 40 projects that have been exempted from seeking prior-EC or prior-EP. The projects that are listed include projects such as dredging, digging of wells, Solar Photo Voltaic (PV) Power projects, etc. In the EIA Notification 2006, no such exemption to projects had been provided.
- Comprehensive List of Definitions: The EIA Notification 2020 consists of 60 definitions covering major components and important aspects of the EIA process. Such an inclusive list of definitions was found lacking in the earlier notifications. This would lead to greater clarity to the courts while construing the intention of the legislature when adjudication disputes.

" Although India enacted laws for checking water and air pollution, in 1974 and 1981 respectively, after the Stockholm Declaration (1972) on Environment, however, a comprehensive law on environment protection was only legislated in the year 1986 after the events of the Bhopal gas leak disaster (1984)."

- Introduction of Technical Expert Committee: Paragraph 9 of the EIA Notification 2020 provides for the formation of a Technical Expert Committee (TEC) for the categorization and/or re-categorization of projects based on scientific principles. The TEC has also been conferred with the power to visit any site of a project to evaluate the likely environmental impact. This is a welcome change as up till now, the categorization of the projects had been done based on the "spatial extent of potential impacts on human health and natural and manmade resources."
- Reduction of timeline for grant of EC: As per the EIA Notification 2020, the decision as to the grant or rejection of EP or EP needs to be conveyed to the project proponent within the maximum of 90 (ninety) days from the receipt of the complete application with supporting documents. As compared to the existing framework this is a reduction of fifteen days as under the EIA Notification 2006, the final grant or rejection shall be decided within 105 (one hundred and five) days from the submission of the EIA report by the project proponent.
- Appeal against prior-EC or prior-EP to lie before the National Green Tribunal: The EIA Notification 2020, provides for a project proponent who is aggrieved by the decision of the regulatory authority about the grant of environmental clearance or permission to appeal before the National Green Tribunal within 30 (thirty) days (or sixty days with sufficient cause) from the decision of the regulatory authority.

SHORTCOMINGS OF THE EIA NOTIFICATION, 2020

- Reduction of days for the public to submit its response on the EIA Report seeking environmental clearance to 20 days. The High Court of Gujarat in the case of Centre for Social Justice v. Union of India &Ors. had insisted on a minimum of 30 days for a public hearing. The reduction in the time period under the EIA Notification 2020, therefore, goes against the said direction of the High Court.
- The building and construction projects which seek to cover an area of less than 1,50,000 square kilometres would not require a prior environmental clearance. This will lead to the exclusion of a larger number of new projects from the purview of the notification.
- Central Government declares any project as strategic or which concerns national defense and security, "no information relating to such projects shall be placed in the public domain."
- Reduction in the number of post-Compliance Reports
- Introduction of Post-Facto Approvals. The Supreme Court in Alembic Pharmaceuticals Limited v. Rohit Prajapati & Ors. had clearly stated that "ex post facto environmental clearances" are contrary to law. The Court had further said that "Environment law cannot countenance the notion of an ex post facto clearance. This would be contrary to both the precautionary principle as well as the need for sustainable development."

Legal snippets

SEBI imposes fine of ₹25 cr on MukeshAmbani, Anil

Ambani, others in violation of takeover code

The Securities and Exchange Board of India (SEBI) has imposed a penalty of ₹25 crore on the Ambani family and firms linked to the promoter group for violation of takeover code regulations in the year 2000.

In January 2000, the promoter stake in Reliance Industries (RIL) had increased by 6.83 per cent following conversion of warrants issued in 1994.However, the promoter group failed to make an open offer as mandate under the Substantial Acquisition of Shares and Takeovers (SAST) Regulations 1997.Under the regulations, a promoter group acquiring more than 5 per cent of the voting rights, in any financial year ending March 31, needs to make an open offer to minority investors.

CYBERCRIMES & COVID-19

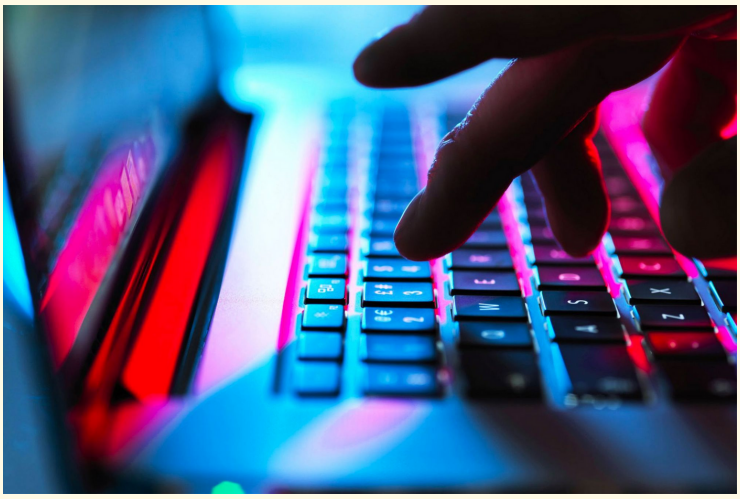
While the vast majority of hackers may be disinclined towards any sorts of violence, it would only take a few to turn cyber terrorism into reality. – **Dorothy Denning**

Did you know that India is speeding up the web ladder and is exhibiting to be the 2nd largest internet user base of about 600 million users approximately?

With such an enormous number of people using the internet, there has always been a need for a robust cybersecurity system. Although there is no law in India that is completely dedicated to cybersecurity, the Information Technology Act 2000 (IT Act) includes rules and regulations that are framed thereunder to deal with cybersecurity and other cybercrimes that are associated with cybersecurity systems.
The IT Act not only provides legal recognition and protection for the citizens availing online services for transactions carried out with the help of electronic data interchange and other means of communication carried out electronically, but it also facilitates safeguarding electronic data and information preventing unauthorized or unlawful use of computers or any electronic system. Some of the cybersecurity crimes that are specifically anticipated and punishable under the IT Act are hacking, denial-of-service attacks, malware attacks, identity fraud, phishing, and electronic theft.

Earlier, the scope and purview of the IT Act, 2000 was limited to the use of computers, computer systems and computer networks only. However, with the emergence of the mobile revolution, there was a need in India for the applicability of the above-said law to be extended to all kinds of mobility-related devices. Thus, the Information Technology (Amendment) Act, 2008 amended the IT Act, 2000. Consequently, now the Indian cyberlaw is applicable to all mobile related and communication devices be it cell phones, mobile phones, smartphones, personal digital assistants, or a combination of both or any other device which can be used or can help in communicating audio, video, images or simple text.

The total volume of phishing emails (phishing is a cybercrime in which a target or a number of targets are contacted via email, telephone, or text message by someone faking, acting, or posing as a legitimate organization to lure the targets into providing sensitive personal data like banking and credit card details, passwords, etc.) and other cybersecurity threats relating to Covid-19 now represents the largest amalgamation of cyber-attack around a single theme and scenario that has been seen in the world's history for the longest of time.



" Recently, cybersecurity threats have exponentially increased owing to the global pandemic of COVID -19. People now are highly dependent on the internet which widens the possibility of cybercrimes."

Legal snippets

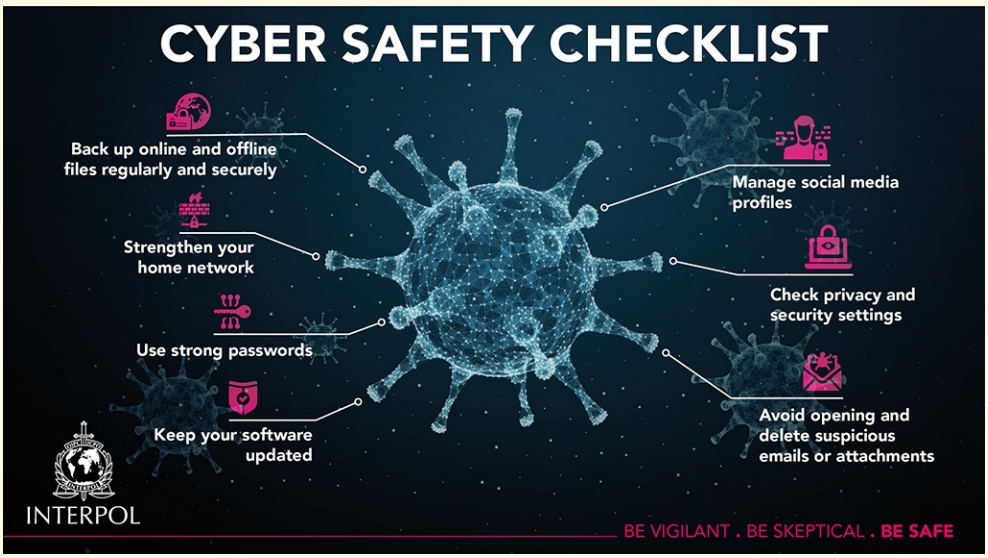
NCLAT stays CoC formation for Oyo subsidiary

Oyo Hotels and Homes Pvt Ltd (OHHPL) got some reprieve after the National Company Law Appellate Tribunal (NCLAT) ordered the interim resolution professional (IRP) to not constitute a committee of creditors (CoC) till the next hearing on April 15.

But the bankruptcy proceedings will continue according to the Insolvency and Bankruptcy Code (IBC) as the appellate tribunal has not stayed the corporate insolvency resolution process in its two-page order that was put on its website late on Thursday.

OHHPL is faced with legal action after an operational creditor RakeshYadav filed bankruptcy proceedings against it over non-payment of dues of Rs 16 lakh.

"This crisis has left us so distracted and disoriented that our defences are down, even as we depend more than ever on all things digital."



To date, it has been observed that these cyber-attacks are spanning from credential phishing, fake landing pages, malware and ransomware strains, malicious attachments and links, business email compromise, downloaders and spam emails, all being linked to Covid-19. With increasing number of companies encouraging citizens to stay at home or work from home, now is the time to focus on cybersecurity more than ever. Remember to keep all your business information backed up independently from your system. Always verify before logging in an out of your emails. Ensure you have the latest anti-virus software installed on your computer and mobile devices. Be vigilant and avoid falling prey to fake messages/ emails that direct you to give payment details, etc. Cyberthreats are constantly evolving in order to take advantage of online behaviour and trends. **The COVID-19 outbreak is no exception, so stay safe!**

Legal snippets

'Prima Facie Dilutes Environment Act' : Bombay High Court Retrains MoEF from Granting Post-facto CRZ Clearance

The Bombay High Court has restrained the Ministry of Environment, Forests and Climate Change from granting environmental clearance (Costal Regulation Zone) to any project, based on a recent office memorandum (OM) "allowing ex-post-facto CRZ clearance" to projects. In an interim order, a division bench of Chief Justice DipankarDatta and Justice GS Kulkarni observed that the OM's prima facie dilutes the rigours of the Environmental Act. The OM lays down the procedure for granting post-facto CRZ clearance to industries/agencies that might have commenced construction without prior CRZ clearance and thereby regularising such illegal construction, the order notes.

"In our prima facie view, contents of the Office Memorandum under challenge have the effect of diluting the rigours of the provisions of the Environment Act and other related enactments."

"In such view of the matter, we restrain the respondents from granting any permission/clearance on the basis of the office memorandum under challenge till August 31, 2021, or until further orders, whichever is earlier."

CASE ANALYSIS:

DECODING THE TATA-MISTRY JUDGMENT & ITS EFFECTS ON CORPORATE GOVERNANCE

The Supreme Court of India (SC), on 26/03/2021 delivered a landmark judgment in the realm of company law and corporate governance. The hotly contested legal battle that ensued between Ratan Tata ("RTN") and Cyrus Mistry ("CPM"), a one-time protégé of the former, has been one of the most high-profile corporate feuds in India. The judgment is pertinent as it has a major bearing on the interpretation of the law as under Section 241 & 242 of the Indian Companies Act, 2013 (the "2013 Act")

The Tata Sons which is an unlisted company (the "Company") has 66% of its shares owned by certain Tata trusts, most importantly by Sir Dorabji Tata Trust (at 27.97%) and Sir Ratan Tata Trust (at 23.56%) while 2 companies by name of Cyrus Investments Private Limited and Sterling Investment Corporation Private Limited, forming part of the ShapoorjiPallonji Group ("SP Group") collectively owned over 18% stake in the Company.

BACKGROUND OF THE DISPUTE

The Tata Sons which is an unlisted company (the "Company") has 66% of its shares owned by certain Tata trusts, most importantly by Sir Dorabji Tata Trust (at 27.97%) and Sir Ratan Tata Trust (at 23.56%) while 2 companies by name of Cyrus Investments Private Limited and Sterling Investment Corporation Private Limited, forming part of the ShapoorjiPallonji Group ("SP Group") collectively owned over 18% stake in the Company.

TIMELINE & CHRONOLOGY

From 25/06/1980 till 15/12/2004, Shri Pallonji S. Mistry, the father of Cyrus Pallonji Mistry was appointed as a Non-Executive Director on the Board of the Company. And on 10/08/2006 CPM was appointed as the Non-Executive Director on the Board.

By the Board Resolution dated 16/03/2012, the Company appointed CPM as the Executive Deputy Chairman for a period of 5 years from 01/04/2012 to 31/03/2017 which was in turn approved by the shareholders at the General Meeting held on 01/08/2012.

CPM, by way of a Resolution dated 18/12/2012, was re-designated as the Executive Chairman of the Company w.e.f. 29/12/2012, along with designating RTN as the Chairman Emeritus.

On 24/10/2016, the Board of Directors of the Company replaced CPM from the position of Executive Chairman and at his place appointed RTN as the interim Non-Executive Chairman. However, it is noteworthy that CPM was removed only from the post of Executive Chairman while it was left to him whether to continue as the Non-Executive Director of the Company.

Thereafter, the 2 companies, Cyrus Investments Private Limited and Sterling Investment Corporation Private Limited (the "Complainant Companies"), in which CPM holds a controlling interest, filed a company petition before the National Company Law Tribunal (NCLT), Mumbai under Sections 241 and 242 read with 244 of the Companies Act, 2013, alleging unfair prejudice, oppression and mismanagement against the Company, its directors and trustees of certain Tata Trusts (Tata Group).

While, by order dated 09/07/2018, the first level of corporate litigation was ruled in favour of the Tata Group by the NCLT. However, in the second stage, the SP Group which had challenged the order of the NCLT before the National Company Law Appellate Tribunal, New Delhi (NCLAT), was awarded a favourable ruling on 18/12/2019.

Legal snippets

NGT Issues Directions On Implementation Of E-Waste Management Rules By State PCBs And CPCB:

The Principal Bench of National Green Tribunal (NGT) recently issued directions for the implementation of E-Waste (Management) Rules, 2016 afterobserving that there were huge gaps in the compliance by the State Pollution Control Boards and local authorities,breaching their obligation of ensuring pollution free environment.

RIVAL CONTENTIONS BY THE PARTIES BEFORE THE SC

The latest Judgment of the SC arises out of the batch of appeals on the below mentioned contentions by the parties, namely, the Company, the Tata Trusts, RTN and the three Tata group companies which challenged the order of the NCLAT. The SP Group had also filed an appeal before the SC against the order of the NCLAT for the grant of additional reliefs.

PRAYER BY THE COMPANY, TATA GROUP TATA TRUSTS, RTN.	PRAYER BY THE SP GROUP AND CPM
NCLAT lacked the jurisdiction to reinstate CPM as Chairman since the said relief was never actually sought before NCLAT	The TATA trustees misused the Articles of Association to undermine the Board of Directors of the Company and also caused erosion of their ability to exercise independent judgment and to act in the interest of the Company.
Father of CPM was inducted as a Non-Executive Director on 25/06/1980, though the Articles of Association did not confer any right of Directorship upon the SP Group.	The Company was a public company in form and conduct and hence the conversion of the Company into a private company by a handwritten order of the RoC, effected at night just before NCLAT was to hear the appeals, was completely shocking.
Removal of CPM was on account of the complete breakdown of trust between the other members of the Board and CPM	The removal of CPM was contrary and in complete violation of the procedure laid down under the AoA.
NCLAT failed to explain the prejudice and oppression of the Board and did not consider the aspects of the legal test under Section 241 and 242 of the Companies Act.	With the advent of the 2013 Act, there is a paradigm shift in law from 'corporate majority' or 'corporate democracy' to 'corporate governance' which includes principles of fairness
Effects of the Amendment Act 53 of 2000 on a deemed to be a public company under Section 43A and the provisions of the 2013 Act, were not appreciated in correct perspective by the NCLAT while dealing with the question regarding conversion of the Company into a private company.	There was a series of acts of oppression and mismanagement including breach of Articles by the Tata Group.
Even though Article 75 of the AoA was not found to be illegal, the NCLAT committed a serious error in whittling down the said Article.	In the dealings of the majority, there was a clear lack of probity and honesty.
Direction to the majority group (Tata group) to consult the SP Group for all future appointments of Executive Chairman or Director, was wholly unsustainable in law.	Articles 104B, 121 and 121A have been misinterpreted, misconstrued and misapplied by the majority group.

THE DECISION OF THE SC

The SC has set aside the NCLAT order, and the SP Group's petition alleging oppression and mismanagement along with other contentions been categorically dismissed, with the ruling granted in favour of the Company on all counts.

The 'Just and Equitable' standard under the 2013 Act

The NCLAT in its order stated that the facts of this case otherwise, justify the making of the winding-up order on the just and equitable ground. For refuting the same, the SC relied on the judgment of the Privy Council in Loch v. John Blackwood, which held that, for winding up, there must lie a justifiable lack of confidence in the conduct and management of the company's affairs.

To conclude on the just and equitable standard, the SC stated that the Company is a principal investment holding company which is majorly held by philanthropic Trusts and therefore, the NCLAT's findings that the facts otherwise justify the winding up of the Company is completely flawed.

Removal of CPM

In a Section 241 petition, the NCLAT cannot ask the question of whether the removal of a Director was legally valid and/or justified or not. The right question is whether such removal tantamount to oppressive and prejudicial conduct. The Tribunal can grant relief under Section 242 in cases where the removal of a Director might have been carried out as a part of a larger design to oppress or prejudice the interests of some members.

The Court reiterated that the justification of the removal of a person can never be the primary focus of an NCLAT under Section 242 unless the same is in furtherance of oppressive or prejudicial conduct.

Legal snippets

Indian Companies can arbitrate Abroad, Supreme Court rules

The Supreme Court has held that two Indian companies can choose a foreign jurisdiction to arbitrate their disputes. And that such an agreement will not adversely impact either parties' ability to seek interim relief before Indian courts.

The apex court's ruling partially re-enforced and partially overturned the Gujarat High Court's November order in favour of GE Power Conversion India against PASL Wind Solutions Pvt. Ltd.

Power of the NCLAT to direct reinstatement of CPM under Section 242 of the 2013 Act

The SC observed that the NCLAT, despite there not being any reliefs sought to pertain to reinstatement of CPM, had directed the reinstatement as Executive Chairman of the Company and as Director of three other Tata companies for the rest of the tenure. The SC stated that by the time when NCLAT passed its order on 18/12/ 2019, the tenure of SPC's chairmanship had already passed. Therefore, the NCLAT could not have granted a relief not apparently sought for; and there is no question of reinstatement "for the rest of the tenure" after the tenure of office had already been over.

Proportionate representation

The SC held that the right to claim proportionate representation is not statutorily available even to a minority shareholder, under the Companies Act, 1956 Act and under the 2013 Act. As the right to claim proportionate representation is not available for the SP Group even contractually, in terms of the Articles of Association, therefore, neither the SP Group nor CPM could seek from the NCLAT to rewrite the contract, by praying for an amendment of the Articles. Placing reliance upon Section 163 of the 2013 Act, it was contended by the SP Group that proportionate representation is statutorily recognized. However, the Court found this argument completely misconceived. Section 163 corresponds to Section 265 of the erstwhile 1956 Act which enables a company to provide in their Articles of Association, for the appointment of not less than two-thirds of the total number of Directors in accordance with the principle of proportionate representation by means of a single transferable vote.

Proportionate representation by means of a single transferable vote, is not the same as representation on the Board for a group of minority shareholders, in proportion to the percentage of shareholding they have. It is only an enabling provision and it is up to the company to make a provision for the same in their Articles. Therefore, the SC held that there is no statutory compulsion to incorporate such a provision.

TAKEWAYS

- The most pertinent takeaway from the SC Judgment is the reiteration of what has been enshrined in the law that the Articles of a company is supreme and once the investor and shareholders sign it, they cannot later on turn around and challenge the same. The Articles of Association is the bedrock of the shareholders' contract and all actions of the company's Board w.r.t its members and shareholders shall be guided by it.

- Further, the SC has also clarified on what constitutes as "oppression" of the minority by the majority shareholder. The Board losing confidence in an individual and removing him from Chairmanship, does not constitute an act of 'oppression' that would merit winding up of a company which is the primary relief under Sections 241 and 242.

- W.r.t. the takeaway for minority investors, it is that mere allegation of "oppression" will not entitle the minority shareholders for the reliefs prayed. There have to be cogent basis for the Court to act in this regard. And in relation to proportional board representation it has been clarified that the provision applies only for listed and public limited companies while the Tata Sons is a private company and therefore the SP group's demand is incorrect.

After several years of protracted legal fighting, the Tata Group has been given a decisive victory over the minority shareholder of the Company. However, the next step shall be for the SP Group to exit its 18% plus stake in the Company which may be a messy affair as both the rival groups denote different prices that is entitled for the SP Group's shares in the Company.

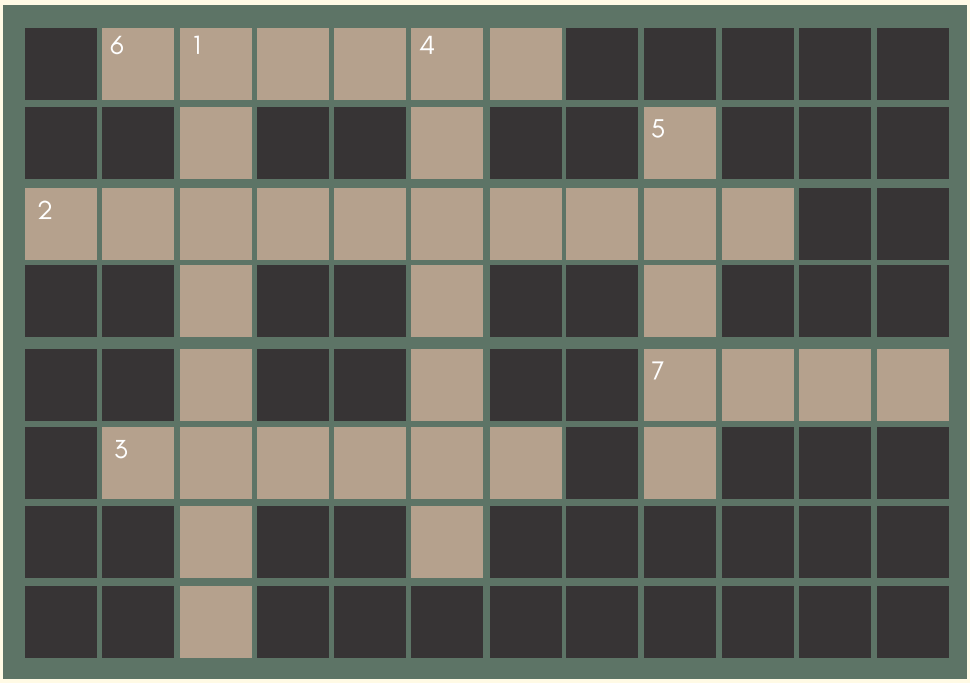
Legal snippets

Will Arbitral Award-Holder's Claim Be Extinguished On Approval Of Award-Debtor's Resolution Plan Under IBC? Yes, Rules Calcutta High Court

The Calcutta High Court settled an important question of arbitration law, viz., whether an arbitral award-holder's claim would stand extinguished upon the approval of a Resolution Plan for the award-debtor's revival, when it was not pressed during the Corporate Insolvency Resolution Process (CIRP).
Relying on Supreme Court rulings from 2020, Justice Moushumi Bhattacharya ruled that the claim would get extinguished once the Resolution Plan was accepted by the National Company Law Tribunal.
Ruling to this effect, the Court remarked,

"This can be seen as a necessary and an inevitable fallout of the IBC in order to prevent, in the words of the Supreme Court, a "hydra head popping up" and rendering uncertain the running of the business of a corporate debtor by a successful resolution applicant. In essence, an operational creditor who fails to lodge a claim in the CIRP literally missed boarding the claims-bus for chasing the fruits of an Award even where a challenge to the Award is pending in a Civil Court."

LEGAL MINTS



LESSER-KNOWN LAWS

One can use the restroom and drink water at any hotel whether or not one is lodging at that hotel. This law came into force 150 years ago, under the Indian Sarais Act, 1867. Sarai means any building used for the shelter and accommodation of travelers hotels fall under this category. It clearly is one of the bizarre laws of India but a beneficial one, given that our public facilities are far and few.

CLUES FOR THE LEGAL CROSSWORD:

1. An agreement enforceable by law
2. Grant of rights, land or property by government/local authority or other legal entities.
3. Forfeit a claim without the other party being liable.
4. Entity/ company providing you financial coverage in case if unexpected events.
5. Standard for a criminal verdict, beyond reasonable _____.
6. Clear from charge or accusation.
7. Money paid in exchange for release of the arrested in guarantee that they will come to trail.

ANSWERS

1. Contract 4. Insurer
2. Concession 5. Doubt
3. Waiver 6. Acquit
7. Bail

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