EDITION VII

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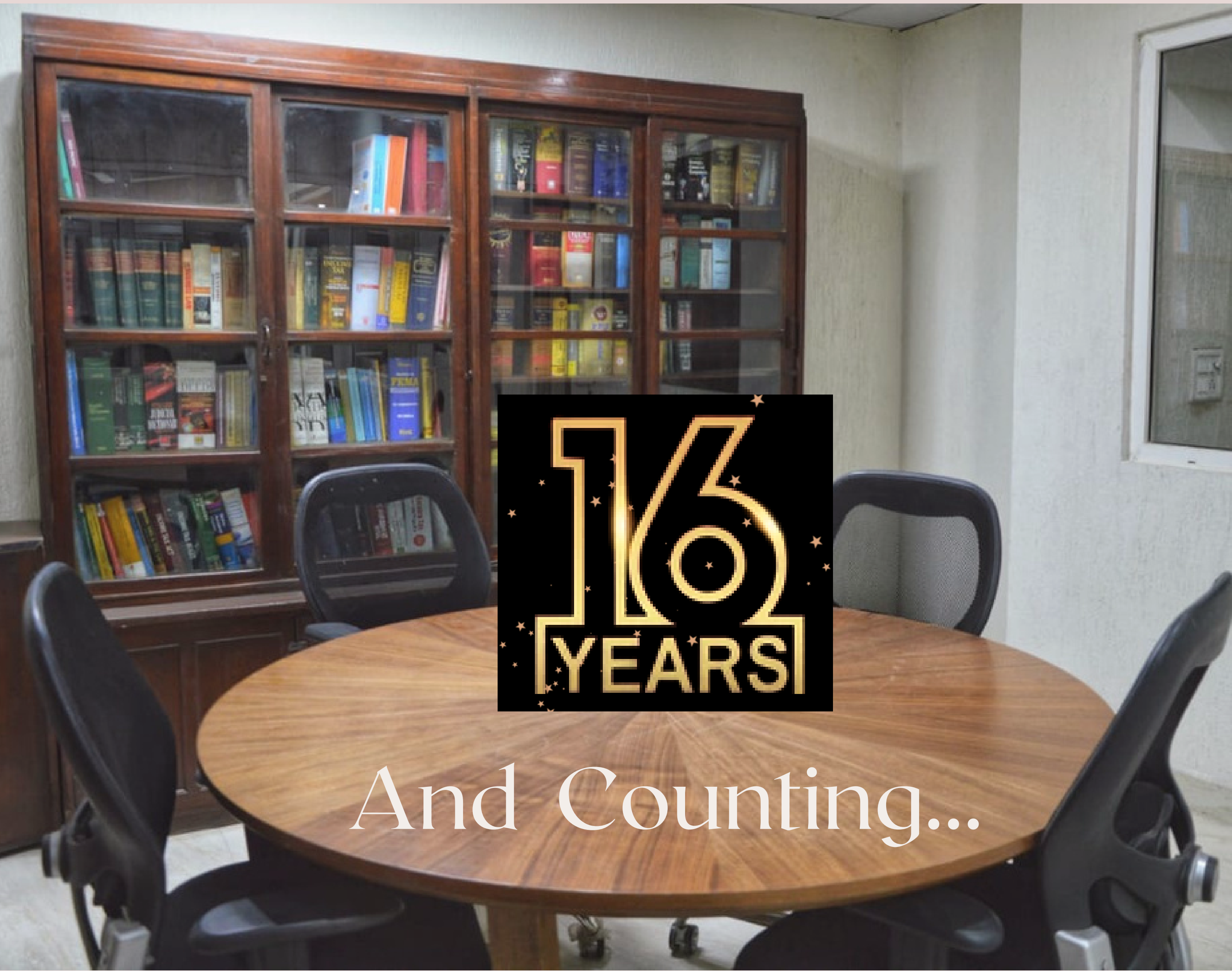
THE LEGACY OUTREACH

July - September 2022



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SECTION - I

16 Years of Lex & Legacy

An Ode to Our Mentors | **16 Years of Success**

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An Ode to Our Mentors

TURNING 16

Since its establishment in 2006, Legacy has travelled a long way on the path toward success and our beloved Managing Partner and Co-Managing Partner have played quite a significant role in the journey.

Since their association with the firm in June 2010, Mr Gagan Anand and Ms Shalini Munjal have worked relentlessly to bring Legacy to the forefront of the legal practice, with innumerable national and international projects under its garb and the most prominent and esteemed clients on its portfolio.

Their decision to break out of the generic path of domestic projects and to take the road less travelled by immersing the firm in as much of an international space as the domestic one has resulted in the Firm being in front of the most mesmerizing scenery, where success is visible as well as achievable. After 16 years of such a growing curve, we are utterly thankful and obliged for their guidance, their teachings and for this supreme position.

16 Years of Success

16 years have passed by and the Legacy has continued with us, all because of the endeavours of our lawyers and the faith of our clients. The perfect celebration of these 16 years is the enhancement in the rankings announced by various Global Directories, which we are pleased to share with you.

- AsiaLaw has given the tag of a "**Recognized Firm**" to Legacy Law Offices LLP.
- It has also recognized Mr. Gagan Anand, Managing Partner as a "**Notable Practitioner**".

- Benchmark Litigation has given the tag of a "**Notable Firm**" to Legacy Law Offices LLP.
- It has also recognized Mr Gagan Anand, Managing Partner as a "**Litigation Star**".

- Legal 500 has given the tag of a "**Leading Firm**" to Legacy Law Offices LLP.

- IFLR 1000 has given the tag of a "**Recommended Firm**" to Legacy Law Offices LLP.
- It has also recognized Mr. Gagan Anand, Managing Partner as a "**Highly Regarded Lawyer**".

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SECTION - II

For the Literati

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Celebrating 16 years of MSMED Act, 2006

One-third of the nation's GDP comes from micro, small, and medium enterprises. Although small-scale industries contribute only a small share of India's GDP, they still significantly impact its global economic growth. This article acknowledges the vivid existence of micro, small and medium sector enterprises in India through the lens of the Micro, Small and Medium Enterprises Development Act, 2006. In 2022, sixteen years after its inception, it is only growing stronger, assisting small businesses in India to overcome the common endemic issues pertaining to the distribution of wealth, employment generation, and the most significant recent market recession in a developing country such as India.

To foster and grow small-scale, agro and rural industries, the government of India had constituted the Ministry of Small Scale Industries and Agro & Rural Industries as the focal agency for developing relevant programs and schemes and supplementing its coordination and implementation efforts. The Ministerial body works toward regulating, promoting and developing micro businesses in India. It is also responsible for improving the efficiency of MSMEs with the help of the MSMED Act, 2006, which accounts for all the procedural legalities associated therewith. For instance, the registration of MSMEs on governmental portals is a vital legal necessity for availing the benefits of schemes intended for the welfare of small-scale industries.

The Micro, Small and Medium Enterprises Development Act of 2006 is a substantially relevant piece of legislation that accounts for the minor gaps within the industrial fabric of India. Accordingly, the act includes six chapters governing all aspects of MSMEs in the following heads:

- Establishment of National Board for Micro, Small and Medium Enterprises;
- Classification of Enterprises, Advisory Committee and Memorandum of Micro, Small and Medium Enterprises;
- Measures for Promotion, Development and Enhancement of Competitiveness of Micro, Small and Medium Enterprises;
- Delayed Payments to Micro and Small Enterprises; and
- Miscellaneous provisions.

As a result of this legislation, smaller companies are becoming more prominent contributors to Indian infrastructure. As well as that, it allows industrialists, economists, academicians, and many industry experts to understand the value of smaller companies in a developing economy such as India.

Significant Recent Changes in MSMED Act:

Alterations in definition included expansion of the meaning of micro industries to Rs. 1 Crore of investment and Rs. 5 Crore of turnover.

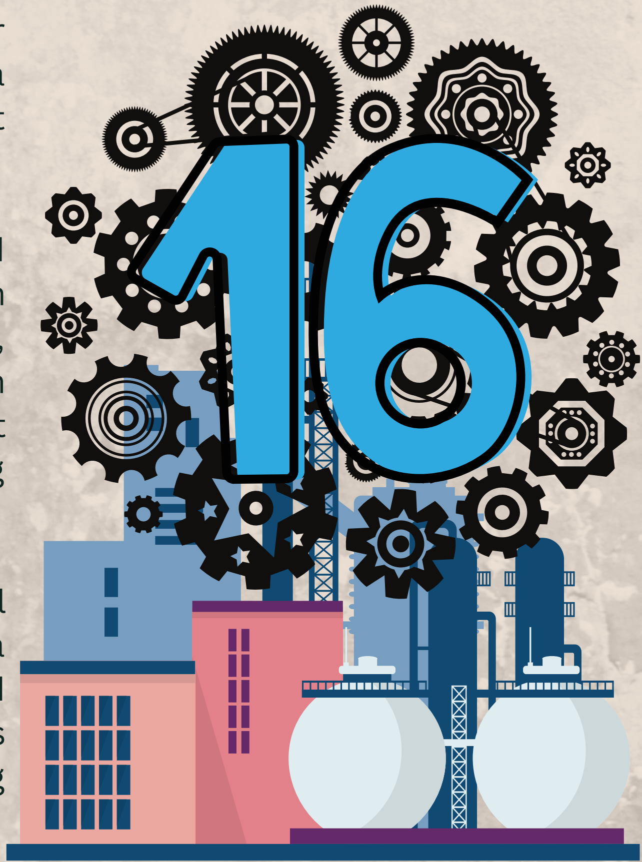
The new limit for micro businesses is Rs. 10 Crore of investment and Rs.50 Crore of turnover. Also, the new limit for medium sector enterprises is Rs. 20 Crore of investment and Rs. 100 Crore of turnover. An additional upward revision to the definition increased the investment limit of medium enterprises to Rs. 50 Crore of investment and Rs. 250 Crore of turnover.

The need for improvements in the previous filing method of the Udyog Aadhaar Memorandum has led to the opening of a new Udyam registration portal. To increase micro industries' registration on this portal, the government has also made an exemption on the necessity of GSTIN through the Central Goods and Services Tax Act, 2017. However, to suggest that the growth prospects of MSMEs would significantly improve due to their registration on the new portal would be a false statement as no study can back it up.

Moreover, the government has included Retail and Wholesale Trade and Urban Street Vendors in MSME Category. Also, registration on the Udyam Registration Portal is allowed for them. It is pertinent to add here that Priority Sector Lending is the only benefit available to them.

It would be a terrible idea to regard small industries or emerging startups in India that lack sufficient capital, nuanced technology and much more as subversive to the larger thriving businesses.

By deriving benefits from modest governmental schemes enacted under the Micro Small and Medium Enterprises Development Act, 2006, these small-scale industries perhaps reflect and contribute only to a trivial part of the economic growth aspect of the country. The success of the MSMED Act comes from its microscopic tendency to put small-scale industries at the forefront by focusing on their growth, development and promotion strategies. It tends to provide a solution for the challenges relating to growth, employment, wealth and income inequalities as they continue to struggle because of a lack of efficiency, resources, productivity, funds and appropriate modern-day technologies. Perhaps, the dire necessity of the MSMED Act is apparent in improving the global competitiveness of micro industries in India.



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16 Models of PPPs in India

Lease Contracts

This is a commonly adopted partnership in which only the management and maintenance of publically owned assets are given out to private entities. It can be traced to Indian Railways, where the authority leases out retail outlets to private proprietors.

Management Contract

These contracts are widespread in the Indian regime, where the Government assigns day-to-day management control to private entities in exchange for performance incentives. Even though. the service provision obligation vests with the public authority, it is in actuality vested with a private party who is not required to make any capital investment since the beginning.

Private Investment Management Contracts

This model is a sub-type of the above, where private parties make a limited investment for rehabilitation or expansion of the Government facility. It has been adopted in India's water supply and power distribution sectors, aiding Bhiwandi Distribution Franchise, Latur Water Supply Project, etc.

Area Concessions

A fair glimpse of these agreements can be seen in water distribution projects delegated to private entities to deliver services in a specified area, where the operator is responsible for all investments. Moreover, private parties bear all the management and maintenance burden, whereas the assets are still publically owned throughout the concession period.

BTL (Built-Transfer-Lease)

In this model, the private party holds the responsibility for Capex and operations post-construction while transferring the asset/facility ownership to the public authority as soon as the construction concludes. The Build-Transfer-Lease model involves the investment recovery by private parties through government lease and operational costs payments for a specified period until the agreed amount is recovered.

BOT (Build-Operate-Transfer)

This contemporary model is characterised by dominant risk sharing by the private party bearing risk of the project financing, O&M and construction. However, the public agency carries no risk. Instead, it repays private partners either through rent/annuity or by allowing private investors to collect revenue from users from the developed facility, finally transferring the facility to the public party after the end of the agreement period.

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BOT Annuity Model

This model has been increasingly used by NHAI in the road sector of India, which is presented through added benefits to the traditional BOT model providing annuity payments to developers at regular intervals to aid financial constraints experienced by private parties.

BOO (Build-Own-Operate)/ BOOT (Build-Own-Operate-Transfer)/ DBOOT (Design-Build-Own-Operate-Transfer)

BOO and BOOT are types of the BOT model, but with the facility's ownership resting with private participants till the expiration of the contract period, conjoining other O&M risks, after which the facility is transferred back only in the case of BOOT and DBOOT. Another distinguishing feature is the contract between the public and private parties to purchase the goods and services manufactured in the facility according to mutually agreed terms and conditions.

OMT (Operate-Maintain-Transfer)

A fusion of toll and O&M contracts, this model was progressively adopted in India's highway and roads sector. This is a concession agreement where the concessionaire bears the risk of O&M being responsible for toll collection, maintenance and construction of additional facilities during the agreed-upon concession period.

BOLT (Build-Own-Lease-Transfer) or BLT (Build-Lease-Transfer)

In this arrangement, any public or private sector client concedes to a private developer to build and design a project bearing the risk of construction and financing. After project completion, the developer leases the property for a certain period to the public agency on a prefixed amount, retaining the O&M responsibility during the lease and ultimately transferring the ownership (after recovery of investment) to the client after the specified period. This can be seen in railway projects for gauge conversion that has witnessed limited success in India.

DBO (Design-Build-Operate)/ DBFO (Design-Build-Finance-Operate) /DBFOM (Design-Build-Finance-Operate & Maintain)/DBFOT (Design-Build-Finance-Operate-Transfer)

Commonly referred to as 'Concessions', this partnership attributes the entire responsibility of designing, constructing, financing, operating and maintaining upon the private party that recovers its investment and returns through annuity payments, concessions granted, etc. In addition, the public authority's engagement is highlighted through help in land acquisition, providing guarantees to financial agencies and assuring reasonable returns to private partners according to industry standards throughout the concession period.

HAM (Hybrid Annuity Model)

Suggestive in its name, this model is a hybrid of traditional BOT Annuity and EPC models cleverly combined to overcome prior loopholes. In the newly adapted model, the Government authority provides 40% of the project cost in the initial five years while the remaining is paid in the form of an annuity decided beforehand. Furthermore, in contrast to other models, financial risk is distributed amongst the parties, whereas the O&M risk is taken up by private participants for which a stipulated amount is paid by Government in addition to the annuity.

LDO (Lease-Develop-Operate)

This arrangement can be readily seen in the airport sector and facilities where the public entity/Government retains the ownership of the newly developed facility, sourcing private investment through lease payments from private entities per the lease agreement.

LOT (Lease-Operate-Transfer)

In this PPP variant, a publically owned operating facility is entrusted to the private party according to the agreed-upon terms and conditions. These arrangements are usually made for long periods, after which the asset is transferred back to the public authority.

EPC (Engineering, Procurement & Construction)

The EPC model features the minimum engagement of a private party (usually engineers) through bidding for engineering expertise, and their scope is limited to the same. But on the other hand, this partnership burdens the public agency with the entire project cost, construction risk and procurement procedure. Therefore, the Government usually despises this model as it primarily defeats the purpose of risk sharing within PPP.

TOT (Toll-Operate-Transfer)

This mode of sourcing private investment balances the financial burden of the Government through a lumpsum payment by private parties (seen as an effective mode of asset recycling) to operate and toll the projects for thirty years.

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Case Analysis: Telecommunication Consultants India Ltd. v. MBL Infrastructure Ltd.

It is a frequent occurrence in Indian construction arbitrations, to encounter questions about the absence of losses. This case emerges from a series of disputes between Telecommunication Consultants India Ltd. (hereafter 'TCIL') and MBL Infrastructure Ltd. (hereafter MBL) regarding the construction of 144 Type-V and 24 Type-VI houses on the Rajiv Gandhi Thermal Power Project campus at Khedar in Hisar, Haryana.

Round-up of brief facts:

On 22nd July 2008, TCIL submitted its tender to Haryana State Roads and Bridge Development Corporation Ltd. (hereafter HSRCD) for constructing houses with basement parking in the Hissar district. Soon HSRDC accepted TCIL's bid of Rs. 32,29,49,824/- and made a contract with them to execute the project. The primary questions, in this case, revolve around challenging a compensation award rendered by the Arbitral Tribunal under Section 34 of the Arbitration Act of 1996, stating it to be patently erroneous and contrary to the fundamental policy of the law.
Moreover, the learned counsel appearing for TCIL had criticised the disputed award on a few factual grounds. Firstly, the impugned award is patently erroneous, referring to a particular claim made by MBL and that the Tribunal had not considered that HSRDC erroneously disbursed a certain amount on an inflated measurement of the work done by MBL.

Secondly, the Tribunal erred in accepting that MBL had received a certain sum from TCIL. Also, it ignored that TCIL had paid a higher sum to MBL previously and withheld the difference between the two costs according to the Works Contacts Tax (hereafter WCT). Further, it had also not accounted for a certain sum deposited by TCIL towards WCT, against which there was no dispute as to the MBL's liability to bear the same.

Consequently, MBL was liable to pay for the manpower employed by TCIL. But conversely, MBL claimed to have suffered losses because of the increased commission paid for the bank guarantee. Given the above, the Tribunal found that MBL failed to prove its claim of losses because of a lack of evidence, further stating that awarding damages in the absence of sufficient evidence would be patently illegal and opposed to the fundamental policy of Indian Law. Interestingly, according to the evidence, MBL had only used 90 crores of INR 465 crores of the bank guarantee limits. Thus, it was contended that the Tribunal was justified in granting 10,00,000 compensation to MBL.

Relevance of the case:

The decision has been helpful to arbitrators as it provides a practical guide that helps them determine whether claims are overlapped by closely examining the nature of the claims and, most importantly, their characteristics when the decision of the Arbitral Tribunal is considered patently erroneous. Then, TCIL approached MBL to function as a sub-contractor within this project on specific terms regarding retention of a margin sum and disbursement of the balance amount. Thereafter, upon the project's timely completion by MBL, it received a certificate of excellence.

But since TCIL, HSRCD, and MBL could not arrive at peaceful terms on payment and extension period dues, MBL approached the High Court of Delhi under Section 9 of the Arbitration and Conciliation Act, 1996, to seek the ends of justice. MBL stated that it had put money towards a bank guarantee for TCIL. But after the project was completed, TCIL encashed the equivalent instead of restoring the sum back to MBL. To prevent a TCIL from encashing the demand draft given by the Bank, MBL resorted to a Section 9 petition to further take up a stay order.

Reaching a settlement:

On the one hand, TCIL claims reimbursement of costs incurred in furtherance of the fulfilment of obligations associated with the contract in question between MBL, HSRDC and TCIL.

On the other hand, as a result of the Court taking a closer look at the merits of the award rendered by the Tribunal, it has concluded that the Tribunal could not order any compensation after finding that no losses had been incurred. Accordingly, the ruling of this case is an exception to the rule under Section 34 of the Arbitration Act. The questions of law arise because the Court cannot decide on the dispute's merits, but the Court chose to do so in this instance.

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Data Protection Bill, 2022 - An Overview

The initial phase of the Digital Economy led to a massive amount of data sharing and with the lack of any norms and regulations governing the data, it was guided by the contracts developed by social media companies which were heavily skewed in favour of Companies. However, European regulators began to recognise that a lack of adequate regulation was having a negative impact on the customers as it was infringing their right to privacy, therefore with an intent to safeguard these rights GDPR was developed.

The General Data Protection Regulation (GDPR) of the European Union is the preferred model for the Indian authorities' efforts to align the nation's data protection law with worldwide best practices.

Until now, the Information Technology Act, 2000 and the Rules framed thereunder, namely the Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Data of Information) Rules, 2011 ("SPDI Rules") were the legal cornerstones to safeguard the personal information of people. Even though the statute has been revised numerous times to keep up with the evolving times, there is an agreement in both public and private sectors that India now needs a unique personal data privacy law in line with international standards as it emerges as a global power.

In the landmark judgement of *Justice K.S. Puttaswamy and Anr. vs. Union of India (UOI) and Ors.*[1], the Honorable Supreme Court affirmed that the Constitution of India guarantees each individual a fundamental right to privacy, under the ambit of Article 21 of the Constitution of India. In furtherance of the same objectives, India enters the list of significant economies to introduce and enact a robust data privacy law based on the recommendations of the panel led by BN Srikrishna retired judge of the Supreme Court. The Minister of Electronics and Information Technology introduced the "Personal Data Protection Bill, 2019" (PDPB) in Lok Sabha in 2019.

The PDPB was mired in confusion, especially when it came to the exemptions given to government organisations, the handling of anonymized data, the requirement for data localization, and the rules governing cross-border data transfers. The PDPB was further sent to a Joint Parliamentary Committee ("JPC") for further consideration and suggestions.

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The JPC submitted its "Report of the Joint Committee on the Personal Data Protection Bill, 2019" was presented in the Parliament in December 2021, the updated bill now known as "The Data Protection Bill, 2021"("DPB") enlarges the scope of the revised bill as now it includes both personal and non-personal data as stated by the committee, "it is impossible to discern between personal data and non-personal data, when mass data is acquired or conveyed," because of which only a single regulator is anticipated to govern both types of data[2].

The main recommendations of the revised bill make it more in-coherence with the GDPR rules, from the date of implementation of the act it provides a two-year transition for the implementation of the provisions by the data fiduciaries and data processors to make the requisite changes to their policies; infrastructure; processes etc. It also imbibes the idea of consent to make the process of data processing fair and transparent but in certain reasonable situations it can be processed without consent, thereby balancing the interests of both the data principal and data fiduciary. It has defined, consolidated or revised several terms clarifying the ambit of the terms, like consent manager, data auditor, data breach, data fiduciary, data processor, data protection officer, harm and non-personal data.

The revised bill defines breaches that must be reported to the Data Protection Authority within 72 hours of the incident, after which the DPA determines whether users need to be made aware of the breach and what actions should be taken.

Data is the new currency, while the new Data Protection Bill once implemented, might create challenges for businesses but it also offers a great opportunity to grow and be compliant with the global markets.

India's approach to data protection, though partially influenced by the European Union's GDPR, has taken its own course by incorporating a number of distinctive features, including the unification of personal and non-personal data under one roof, data localization, coverage of hardware devices, management of social media platforms, including criminal liability for the breach and more. Once implemented India's data protection laws will be comparable to those of other developed countries, despite certain loopholes.

In today's era of information explosion, compliance with data privacy regulations might be difficult. However, if organizations take the initiative and organize ahead of the enforcement date, this need not be the case.

Businesses in India are required to have a thorough privacy and compliance plan, and those that do so would benefit greatly. Data privacy will become increasingly important over the next few years, therefore now is the perfect time for organizations that haven't started or are just starting their compliance journeys. Organizations should create a tiered, comprehensive data security policy, and embrace the new norms, once compliant it would work as a competitive advantage, not just limited to India but the global market as well.

End - Notes

1. Justice K.S. Puttaswamy and Anr. vs. Union of India (UOI) and Ors. ,(2019) 1 SCC 1.
2. Key Takeaways: The JPC Report and the Data Protection Bill, 2021, INTERNET FREEDOM FOUNDATION (Mar 23, 2022) https://internetfreedom.in/key-takeaways-the-jpc-report-and-the-data-protection-bill-2021-saveourprivacy-2/.

Re-examining the ambit of Patent Illegality through the case of Delhi Airport Metro Express Pvt. Ltd. vs Delhi Metro Rail Corporation Ltd.

The validity of arbitral awards against Court judgments has been repeatedly debated over the years, which has been allowed to uphold the merits of justice and not otherwise. The present case deals with the same question, finally reinstating people's belief in arbitral proceedings.

A project of laying down the Airport Metro Express Line (hereafter referred to as 'project') from New Delhi Railway Station to Dwarka Sector 21 with an approximate length of 22.7 kilometres was proposed by the Delhi Metro Rail Corporation Ltd. (hereafter referred to as 'DMRC'). DMRC decided to take up the project through a public-private partnership by engaging a concessionaire. Accordingly, on 25.08.2008, DMRC and Delhi Airport Metro Express Pvt. Ltd. (hereafter referred to as 'DAMEP' or 'concessionaire') signed a concession agreement (hereafter referred to as "Agreement").

The agreement established both parties' roles and responsibilities, holding DMRC responsible for all the civil work and DAMEP accountable for the project's design, installation, commissioning, operation and maintenance. Ultimately, safety clearances and the date of commercial operation were received on 10.01.2011 and 23.02.2011, respectively, from the Commissioner of Metro Railway Station (CMRS).

Later, after the project became operational, a letter was addressed to DMRC mentioning various issues relating to the quality, design and installation, complaining of girders sinking at numerous locations due to cracks. DMRC responded to the letter on 18.06.2012, clarifying that no bearings were found damaged even though they admitted that grouting material was loose, for which DMRC would take immediate action. DMRC further advised DAMEP to impose speed restrictions in the interest of safety.

To decide upon further actions, a meeting was conducted asking for the submission of an interim report, after which DAMEP stopped the project's operations on 01.07.2012.

Immediately after that, a notice dated 09.07.2012 was sent by DAMEP, asking DMRC to cure the defects within 90 days from the date of the notice, the failure of which would have a Material Adverse effect.

Subsequently, DMRC and DAMEP conducted several meetings to understand and cure the defects. However, on 08.10.2012 DAMEP issued a notice to terminate the agreement for non-compliance with the previous notice.

In objection, DMRC invoked the arbitration clause under Article 36.2 of the agreement on 23.10.2012. Later, DMRC restarted the Line on 22.01.2013 after sanction by CMRS, taking over the operations from DAMEP on 31.06.2013.

The Arbitral Tribunal considered various issues, eventually deciding in favour of DAMEP, accepting that the termination was valid as the respondent did not cure the defects within the allotted time. Additionally, the tribunal awarded a sum of Rs. 2782.33 Crore with interest as termination payment to be made to DAMEP.

On 11.05.2017, DMRC filed a petition to set aside the Arbitral award under Section 34 of the Act in the Delhi High Court, which was dismissed by a Single Judge Bench stating that the award needed no intervention by the Court.

In recourse, DMRC filed an appeal in front of the Division Bench, challenging the previous judgment under Section 37 of the Act.

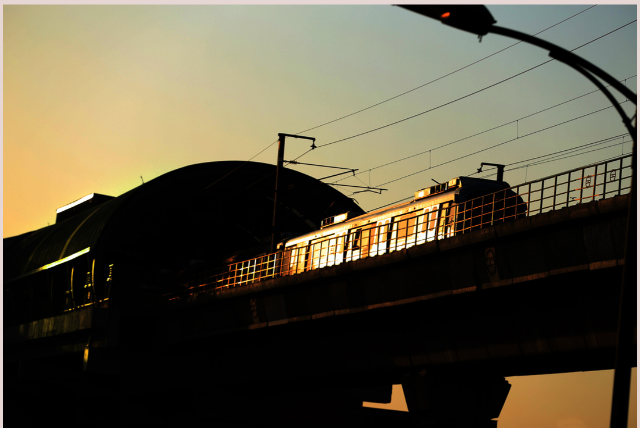
The appeal of DMRC was allowed, and the decision was reversed, setting aside the award on the ground of patent illegality. However, DMRC also filed an SLP challenging the specific provisions of Division Bench relating to grant of interest and refusal of specific performance, including non-consideration of other issues. Hence, the appellants have approached the Apex Court to reverse the order of the Division Bench.

Now the issue posed in front of the Apex Court was whether, in the exercise of its power under Section 37 of the Arbitration and Conciliation Act, 1996, the Division Bench of the Delhi High Court was right in interfering with the award dated 11.05.2017 passed by the Arbitral Tribunal in favour of appellant? The Apex Court answered the issue in a detailed judgment stating that the High Court was wrong in interfering with the decision taken by Arbitral Tribunal as the permissible grounds for interference were overstepped subsequently, ordering the arbitral award to be reinstated as there was no fault detected on part of the Tribunal.

The Court took reference to precedents to state the grounds within which the arbitral award can be set aside within Section 34(2-A).

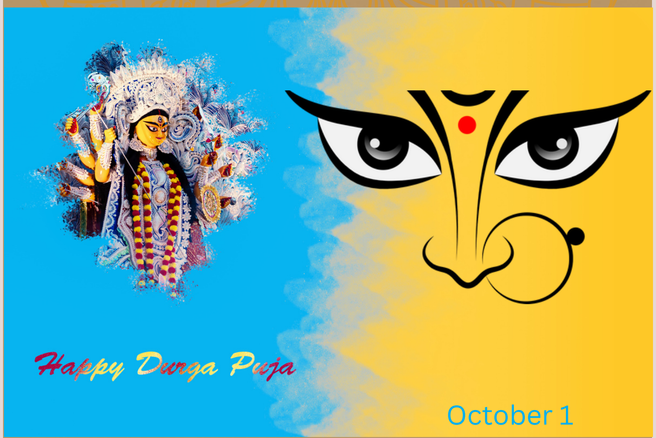
It ruled that it is limited to only when the arbitrator takes a view which is not even a possible one, but the same cannot be done when the arbitral tribunal takes one of the two possible views or when he interprets a clause in a contract in a non-reasonable manner, i.e. opposite of what a reasonable person would do, or if an arbitrator wanders outside its jurisdiction. The Hon'ble Supreme Court also stated that Courts do not sit in appeal against the arbitral award and are prohibited from reappreciating evidence, which the High Court did in the present case.

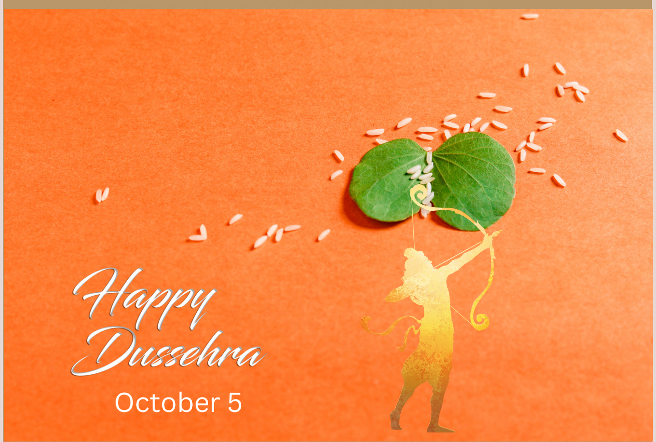
In accordance with Section 5 of the Act, the judicial Court is barred from interfering with the decision of the Arbitral Tribunal except under Section 34 which was further amended in 2015 to progressively curb the limit of judicial interference. In addition, the Court highlighted that Section 34(2-A), holding patent illegality as a ground to set aside an arbitral award, has been used by Courts in a nescient manner with a tendency to defeat the primary objective of the Arbitration and Conciliation Act in so many cases upholding that the Courts must use this power sparingly, only in case of injustice seen on the face of it.

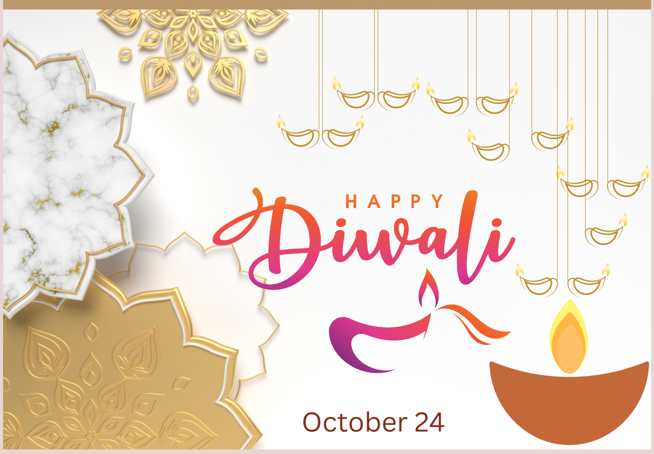


Greetings!

As the celebratory month is nigh, the Legacy Family would like to wish a very Happy and Prosperous Durga Puja, Dussehra and Diwali to all its readers!







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Moonlighting Work Culture - Legal and Ethical Dispositions

Meaning and Necessity

To address legal and ethical questions in the context of moonlighting, it is appropriate to examine the meaning and necessity of moonlighting. Its roots go back to 1954, which implicates the notion of working in the light of the moon. In other words, moonlighting means working part-time at night and having an elementary day job. The relationship between the working hours of two jobs and the employee's loyalty to both is complicated and overlaps. Some people believe that moonlighting is a positive connotation of the changing landscape of corporate workplace culture, while others ignore the concept.

The inherent necessity of moonlighting is a by-product of changes in work, life, employability, etc., caused by the global pandemic. Proponents of the concept of moonlight see it as the future of the on-demand economy because of its broad range of benefits, such as increasing the ability to earn an income, developing more skills to advance in the marketplace, acquiring more practical experience in different types of jobs, etc. However, provided that the norm of moonlight can be gratifying to today's youth, its glory is threatened by the broken foundations of morality.

Legal Position

From a legal perspective, existing labour contract laws in India do not harmonize with the emerging system of work duplication in so far as it interferes with the principles of traditional work culture ethics. As a matter of fact, there is nothing in the Factories Act that speaks to the idea of moonlighting. In addition, traditional employers believe that loyalty, privacy and confidentiality are the moral underpinnings of the ideal constitution of workmanship. They fear that these principles will be seriously compromised if the very essence of a moonlighting labour policy is to be embraced.

It should be noted that there is a gap in the compliance standards between daytime work and moonlighting. That is to say, employees who work in different positions during their official working hours violate their main employment contract. Interestingly, an essential part of an employment contract is the hours of work clause, which requires an employee to devote substantial work hours.

Indian law does not entirely forbid moonlighting work. However, a moonlighting policy is prohibited under section 60 of the Factories Act of 1948.

In that regard, it is also pertinent to clarify the meaning of an employee. It is similar to a worker, which is defined as anyone employed in an industry to work for pay, whether the terms and conditions of employment are written or implied in the employment contract as set out in Section 2(s) of the 1947 Industrial Disputes Act or Section 2(zr) of the Industrial Relations Code of 2020.

Traditional Indian employers generally restrict external work to their employees since they are already subject to the commercial obligation of their day job. However, some companies allow the same, provided this does not affect the employee's efficiency level during regular working hours. The problem, however, is that while some companies are encouraging parallel jobs, others are not even able to accept them. For example, Swiggy, a well-known food delivery company in August, authorized a moonlighting policy for the first time. In addition, the policy is designed to ensure the well-being of employees and does not undermine Swiggy's operations due to conflicts of interest. Likewise, Cred, a fintech unicorn, also supports the concept of moonlight labour culture.

Ethical dispositions

The moonlight work policy is anomalous because although employees may enjoy the benefits of part-time jobs, it is still a corrupted idea in the traditional sense of workplace loyalty. Moonlighting is a secretive act contrary to the conventional working ethics of any industry in India.

The sudden hit of the pandemic marked a surge in moonlighting in India through the Work-From-Home or Work-From-Anywhere approach. Supporters of this new corporate norm believe that the paradigm shift is justified because people are demanding more flexibility in today's workplace. They argue that this will soon become a widespread concept. So instead of revolting against the same thing, employers must clearly delineate the legally acceptable limits of moonlighting that can serve as liberal policy.

To sum it up, dual employment is the essence of the concept of moonlighting. However, India's present workplace regulatory regime is still devoid of any suitable policy for employees who juggle several projects from different organizations simultaneously. Whether there is any actual acceptance on the part of employers regarding the moonlighting phenomenon is still unclear and rare. But, from the employee's perspective, it seems like a profitable avenue with added benefits of enhancing employability and existing skill set. Moonlighting is a trend that can create a win-win situation, provided that an appropriate mechanism is put into place which ensures and necessitates 'transparency' between employers and employees in a dual employment setting.

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