Corporate amicus

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By **Aryashree Kunhambu**

The article discusses a recent decision of the Bombay High Court striking down the amendment to Rule 3(1)(b)(v) of the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Amendment Rules, 2023. The Rule required intermediaries to remove content relating to Government business flagged by a Fact Checking Unit as fake, false, or misleading. Elaborately examining the decision, wherein the issue was referred to the third Judge due to contrary views of the two Hon'ble Judges, the author notes that it remains unclear as to what constitutes the exercise of '*reasonable efforts*' by an intermediary to prevent the dissemination of certain types of content. The author in this regard also notes that due to the establishment of FCUs in certain States Intermediaries now face the task of navigating varying regulations and enforcement standards across different States, which also poses significant risks to open discourse..

Fact Check Unit amendment invalidated – Intermediaries in the line

By Aryashree Kunhambu

Introduction

On 20 September 2024, the Bombay High Court ('**BHC**') delivered a landmark judgment in *Kunal Kamra and Ors.* v. *Union of India*[1], striking down the amendment to Rule 3(1)(b)(v) ('**Impugned Rule**' or '**Rule**') of the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Amendment Rules, 2023 ('**2023 Amendment**'), by a 2:1 majority. The Impugned Rule required intermediaries to exercise due diligence to inform users and make '*reasonable efforts*' to prevent the publication or transmission of information, *inter alia*, that was identified as '*fake, false or misleading*' by a Fact Check Unit (FCU) designated by the Central Government. Non-observance of such due diligence prescribed under the Information Technology Act, 2000 ('**IT Act**') and the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 ('**IT Rules**') may render '*safe harbour*' immunity (*provided under Section 79 of the IT Act*) non-applicable and potentially expose intermediaries to liability under the IT Act, the Bharatiya Nyaya Sanhita or other laws and regulations.

Background

Further to its scope under the Government of India (Allocation of Business) Rules, 1961, the Ministry of Information and Broadcasting (MIB) and PIB established a Fact-Checking Unit[2] ('**FCU**'), that is tasked with verifying claims relating to government policies, regulations, announcements and measures. The FCU aims to facilitate the dissemination of accurate public information and countering fake, false and misleading information about the Government's business.

The FCU employs a fact-checking procedure to address fake news concerning both the Central and State Governments by publishing clarifications on its official website and responding to public inquiries. When an inquiry relates to a State Government, the FCU may also forward the said query to the appropriate authorities for further action.

[1] *Kunal Kamra & Ors.* v. *Union of India & Ors.*, MANU/MH/5903/2024

[2] PIB Fact Check Unit, available at here.

However, in April 2023, the Ministry of Electronics and Information Technology (‘**MeitY**’) directed intermediaries, *via* the Impugned Rule, to make reasonable efforts to prevent the publication or transmission of information identified as fake by an FCU relating to the business of the Central Government. In response to these amendments, writ petitions were filed by petitioners in the instant case before the BHC, challenging the legality and constitutional validity of the Impugned Rule. In its initial split verdict, Justices Neela Gokhale and G.S. Patel (*now retired*) of the Bench presiding over the matter (‘**Division Bench**’), opined as follows:

- Hon’ble Justice Gokhale ruled that the 2023 Amendment was beneficial for intermediaries as obligations to subjectively evaluate information accuracy were reduced to make ‘reasonable efforts’ to prevent dissemination of already identified content. Additionally, such reasonable efforts may not only necessitate takedown but also include publication of appropriate disclaimers. It was further observed that the remedies of approaching the Grievance Redressal Mechanism as well as the Appellate Authority were available and therefore, sufficient safeguards existed to prevent the Impugned Rule from being violative of Article 14 of the Constitution.
- In contrast, Hon’ble Justice Patel opined that the 2023 Amendment improperly shifted the responsibility for content accuracy from creators to intermediaries, raising concerns about any pre-emptive action taken by intermediaries to take ‘reasonable efforts’ in order to mitigate risk of losing safe harbour immunity. The FCU’s role as the sole authority on misinformation was critiqued, noting the absence of adequate guidelines that could lead to biased determinations and unequal treatment under Article 14 of the Constitution.

Therefore, it was concluded that there was disagreement on the matter between the learned judges of the Bench, and consequently, the matter was referred to a third judge for adjudication on the points of difference between the judges of the Division Bench.

Judgement

In his tie-breaking judgement, Hon’ble Justice Chandurkar concurred with the views expressed by Justice Patel and observed that:

(a) The Central Government failed to provide a reasonable basis for distinguishing information related to its business from other types of information. This lack of *intelligible differentia* violates Article 14 of the Constitution, which mandates that classification made under law must be reasonable and not arbitrary.

(b) While the right to access accurate information concerning government affairs under Article 19(1)(a) was upheld, it was clarified that such right does not obligate private entities, such as social media intermediaries, to ensure the veracity of all content on their platforms. Citing the Supreme Court's ruling in *Anuradha Bhasin* v. *Union of India*[3], the bench reaffirmed that free speech encompasses the right to disseminate information widely, emphasizing that the government could not unilaterally define what constituted true or false speech.

(c) The Impugned Rule's restrictions were found to be disconnected from permissible limits under Article 19(2), and it was legally not permissible to expand the nature of restrictions prescribed under Article 19(2) through an interpretative process as was held by the Supreme Court in *Shreya Singhal* v. *Union of India*[4]. The court ruled that this created a chilling effect, as intermediaries may preemptively remove content flagged by the FCU to avoid repercussions, thereby restricting users' freedom of expression.

(d) The court emphasized that the Impugned Rule threatened the operational integrity of intermediaries and potentially infringed upon journalistic freedoms, violating the norms set by the Press Council of India. By subjecting digital platforms to stringent compliance risks, the rule posed a direct threat to the independence of the press and the public's right to diverse information as provided under Article 19(1)(a) of the Constitution of India.

(e) It was observed that while intermediaries may be protected under the '*knowingly and intentionally*' standard for non-Central Government content, they faced a different liability for Central Government-related content whereby, if, after identification by the FCU, such content continued to be hosted, irrespective

[3] *Anuradha Bhasin & Ors.* v. *Union of India & Ors.*, 2020 INSC 31.

[4] *Shreya Singhal* v. *Union of India*, 2015 INSC 257.

of knowledge and intent of the intermediary, it would result in automatic loss of safe harbour under Section 79(2)(c) of the IT Act.

Lastly, Hon'ble Justice Chandurkar concluded that the Impugned Rule sought to abridge fundamental rights guaranteed under Articles 19(1)(a) and 19(1)(g) of the Constitution. Thus, in the absence of sufficient safeguards against the abuse of the Rule that tends to interfere with the aforesaid fundamental rights, it failed to satisfy the proportionality test and could not be read down to save its validity.

Conclusion

This landmark judgment of the BHC struck down the Impugned Rule, which required intermediaries to remove content relating to Government business flagged by an FCU as fake, false, or misleading. It remains unclear as to what constitutes the exercise of '*reasonable efforts*' by an intermediary to prevent the dissemination of certain types of content. In this regard, the Delhi High Court in *Starbucks Corporation*[5] also sought a clarification from MeitY on the scope and ambit of such efforts.

The absence of precise language creates an environment where platforms may preemptively take restrictive measures on user content and behaviour to avoid the loss of safe-harbour immunity and potential liability that may be accrued.

Moreover, the establishment of FCUs in certain States including Kerala and Uttarakhand[6], complicates this landscape further. Intermediaries now face the task of navigating varying regulations and enforcement standards across different States. Such a climate not only dissuades intermediaries owing to a lack of clarity in operating frameworks for them but also poses significant risks to open discourse.

The ruling delivered by the BHC in the instant case, marks a significant step in the realm of digital media and clarifies the scope of due diligence obligations that can be imposed on intermediaries under Section 79(2)(c) of the IT Act. Such judicial interventions (including those set by the High Courts of Bombay[7] and Delhi[8]) underscore the need for clear, definitive

[5] *Starbucks Corporation & Anr.* v. *National Internet Exchange of India & Ors.*, Order dated 24 July 2023. MANU/DEOR/13058/2023.

[6] [Fact-check unit needed to protect people from fake news: Centre in Bombay High Court - The Hindu]

[7] *Anand Patwardhan* v. *Union of India*, 1997 (3) Bom CR 438.

[8] *Srishti School of Art, Design & Technology* v. *Chairperson, Central Board of Film Certification*, 2011 (123) D.R.J.

and balanced frameworks which provide operational clarity to intermediaries, while protecting user rights and combatting misinformation.

[The author is an Associate in Technology and Corporate Advisory practice at Lakshmikumaran & Sridharan Attorneys, Hyderabad]

Notifications & Circulars

- Foreign Portfolio Investor Outreach Cell launched by SEBI
- Timeline reduced for debt securities and non-convertible redeemable preference shares
- Insurers allowed to adopt Ind AS 104 till IRDA notifies Ind AS 117 – Companies (Indian Accounting Standards) Rules, 2015 amended
- FEMA – Directions notified for compounding of contraventions under FEMA, 1999
- Compliance with certain provisions of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 relaxed
- Timelines for disclosures by Social Enterprises on Social Stock Exchange extended
- Due diligence requirements of investors and investments of Alternative Investment Funds notified
- E-adjudication exemption – Companies (Adjudication of Penalties) Rules, 2014 amended
- Shareholding norms of Market Infrastructure Institutions – Framework notified for monitoring
- Liquidity window facility introduced for investors in debt securities through Stock Exchange mechanism

Foreign Portfolio Investor Outreach Cell launched by SEBI

The Securities and Exchange Board of India *vide* Press Release No. 23/2024, dated 25 September 2024 has established a dedicated Foreign Portfolio Investor ('**FPI**') Outreach Cell within the Alternative Investment Fund and Foreign Portfolio Investors Department. This initiative aims to enhance direct engagement with Foreign Portfolio Investors and facilitate their seamless access to the Indian securities market. The primary responsibilities of the FPI Outreach Cell include providing guidance to prospective FPIs during the pre-application stage, assisting with documentation and compliance requirements, and offering support throughout the onboarding process. The cell will also address any operational challenges that may arise during the registration process and beyond. Foreign investors seeking assistance can contact the FPI Outreach Cell at fpioutreach@sebi.gov.in.

Timeline reduced for debt securities and non-convertible redeemable preference shares

The Securities and Exchange Board of India *vide* Circular No. SEBI/HO/DDHS/DDHS-PoD-1/P/CIR/2024/129, dated 26 September 2024, mentions a reduction in timeline for debt securities and Non-convertible Redeemable Preference Shares ('**NCRPS**').

This Circular refers to Paragraph 12, Chapter I of SEBI's Master Circular (SEBI/HO/DDHS/PoD1/P/CIR/2024/54), dated 22 May 2024, which specifies that the listing of debt securities and NCRPS from public issues must occur within T+6 working days from the issue's closure. According to Regulation 37(2) of the SEBI (Issue and Listing of Non-Convertible Securities) Regulations, 2021 ('**Regulations**'), if listing fails to occur within the specified period, issuers are required to refund application funds within two working days, and any delays will incur a liability to pay interest at 15% per annum from the scheduled listing date. To facilitate quicker access to funds and align timelines with private placements, the listing timeline for public issues of debt securities and NCRPS has been reduced to T+3 working days. This option shall be available on a voluntary basis for one year and may become permanent thereafter.

During this period, Regulation 37(2) of the Regulations will apply only after T+6 if T+3 is not met. The T+3 timeline must be disclosed in all offer documents. The provisions of this Circular will apply to public issues opening on or after 1 November 2024 and will be mandatory for those opening on or after 1 November 2025.

Insurers allowed to adopt Ind AS 104 till IRDA notifies Ind AS 117 – Companies (Indian Accounting Standards) Rules, 2015 amended

The Ministry of Corporate Affairs *vide* Notification No. G.S.R. 602(E), dated 28 September 2024 has notified amendments to the Companies (Indian Accounting Standards) Rules, 2015 ('**Rules**') which shall be deemed to have come into effect from the date of their publication. As per the amendment a proviso to Rule 5 of the Rules has been inserted, according to which the insurers have been allowed to adopt Indian Accounting Standard (**Ind AS**) 104 for the preparation of consolidated financial statements until the Insurance Regulatory and Development Authority ('**IRDA**') notifies Ind AS 117 for the said purpose. Ind AS 104 deals with financial reporting for insurance contracts, focusing on limited improvements to insurance accounting and disclosure of future cash flows. A schedule to the Rules has also been inserted after the annexures to the Notification, which provides clarity on aspects such as applicability, object, scope etc. of Ind AS 104.

FEMA – Directions notified for compounding of contraventions under FEMA, 1999

The Reserve Bank of India *vide* Circular No. RBI/FED/2024-25/78 A.P. (DIR Series) Circular No. 17/2024-25, dated 1 October 2024, has notified directions for compounding of contraventions under the Foreign Exchange Management Act, 1999 ('**FEMA**').

Section 15 of FEMA allows the RBI to compound contraventions as defined under Section 13, except for those mentioned under Section 3(a) of the said Act. Subsequently the Central Government notified the Foreign Exchange (Compounding Proceedings) Rules, 2024 on 12 September 2024 which supersedes the Foreign Exchange (Compounding Proceedings) Rules, 2000. All previous directions issued in earlier circulars by the RBI have thus been reviewed in light of the introduction of the new Rules, and this Circular has been issued in supersession of all the circulars notified under the Appendix attached to it.

Under Section 11(2) of FEMA, it is noted that the RBI can direct Authorized Dealers to provide information as necessary for compliance, under Section 11(2) of FEMA. It is also pertinent to note that Section 11(3) of FEMA empowers RBI to impose penalties on authorized persons for failing to comply with the directives given by the RBI, or for any contraventions.

Compliance with certain provisions of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 relaxed

The Securities Exchange Board of India *vide* Circular No. SEBI/HO/CFD/CFD-PoD-2/P/CIR/2024/133, dated 3 October 2024, has extended the relaxation of compliance of Regulation 36(1)(b) and Regulation 44(4) of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, for listed entities conducting Annual General Meetings (‘**AGMs**’) until 30 September 2025. This has been introduced in light of the Ministry of Corporate Affairs extension allowing the non-distribution of physical copies of financial statements for AGMs until the said extension period. It is noted that these extended relaxations are subject to the conditions outlined in SEBI's Master Circular from 11 July 2023.

Timelines for disclosures by Social Enterprises on Social Stock Exchange extended

The Securities Exchange Board of India *vide* Circular No. SEBI/HO/CFD/PoD-1/P/CIR/2024/134 dated 7 October 2024, has extended the outer timelines for annual disclosures under Regulation 91C(1) and the annual impact reports under Regulation 91E(1) of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, to be given by social enterprises on the Social Stock Exchange for FY 2023-24 to 31 January 2025.

Due diligence requirements of investors and investments of Alternative Investment Funds notified

The Securities and Exchange Board of India *vide* Circular No. SEBI/HO/AFD/AFD-POD-1/P/CIR/2024/135, dated 8 October 2024 has notified specific due diligence requirements for Alternative Investment Funds (‘**AIFs**’), in light of the amendment introduced to Regulation 20(20) of the SEBI (Alternative Investment Funds) Regulations, 2012 on 25 April 2024. This Circular thus establishes the mandatory due diligence requirements for AIFs, their managers, and Key Management Personnel to prevent circumvention of laws related to investor eligibility and investments, in detail.

The due diligence conducted must comply with various regulatory frameworks, including SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 for Qualified Institutional Buyers (‘**QIBs**’), the SARFAESI Act, 2002 for Qualified Buyers, and the Reserve Bank of India (‘**RBI**’) norms on income recognition and asset classification. All AIFs designated as QIBs are required to perform due diligence for any investor contributing 50% or more to a scheme.

Additionally, AIFs connected with RBI-regulated entities must conduct due diligence for investors contributing 25% or more to prevent indirect acquisitions of restricted investments. The AIFs must assess existing investments for compliance by 7 April 2025, reporting any non-compliant investments to custodians. Furthermore, AIFs receiving over 50% of their corpus from investors in countries sharing a land border with India must conduct due diligence and report significant investments within 30 days.

E-adjudication exemption – Companies (Adjudication of Penalties) Rules, 2014 amended

The Ministry of Corporate Affairs *vide* Notification No. G.S.R. 630(E), dated 9 October 2024, has notified an amendment to the Companies (Adjudication of Penalties) Rules, 2014 ('**Rules**') which shall be deemed to have come into effect from the date of its publication. As per the said amendment, a proviso has been added to sub-rule (1) of Rule 3A of the Rules which states that any penalty adjudication proceedings already pending before the Adjudicating Officer or Regional Director prior to the amendment requiring the proceedings to be adjudicated on an electronic platform shall continue to be dealt with according to the pre-existing rules notwithstanding the mandate of e-adjudication.

Shareholding norms of Market Infrastructure Institutions – Framework notified for monitoring

The Securities and Exchange Board of India *vide* Circular No. SEBI/HO/MRD/MRD-PoD-3/P/CIR/2024/139, dated 14 October 2024, has issued a framework for monitoring of shareholding norms of Market Infrastructure Institutions ('**MIIs**'), which includes listed and unlisted stock exchanges, clearing corporations, and depositories. All MIIs are required to disclose their shareholding patterns on their respective websites in accordance with the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015. Each MII must appoint a Designated Depository ('**DD**'), not associated with the MII, who will be tasked with monitoring compliance with shareholding limits as specified in the Securities Contracts (Regulations) (Stock Exchanges and Clearing Corporations) Regulations, 2018, and the SEBI (Depositories and Participants) Regulations, 2018.

The DD shall inform the MIIs and stock exchanges when the shareholding thresholds—such as 5%, 15%, or the combined foreign holding limit of 49%—are breached. Stock exchanges are instructed to establish coordination mechanisms with depositories to ensure that Trading Members (‘**TMs**’) and their associates do not exceed a 49% aggregate holding. Additionally, shareholders acquiring 2% or more equity shares are expected to meet fit and proper criteria. The MIIs must publicly disclose this information and submit the details of non-compliant shareholders on a quarterly basis to SEBI. In the event of a breach, the DD will initiate a freeze on voting rights and corporate benefits associated with the excess shareholding.

This Circular will come into effect after 90 days from the issuance date and will rescind all previous guidelines issued in this regard.

Liquidity window facility introduced for investors in debt securities through Stock Exchange mechanism

The Securities Exchange Board of India *vide* Circular No. SEBI/HO/DDHS/DDHS-PoD-1/P/CIR/2024/141 dated 16 October 2024 has introduced the Liquidity Window facility for investors in debt securities through stock exchange. This facility aims to enhance liquidity in the corporate bond market, particularly for retail investors, by permitting issuers to offer a put option at predetermined intervals, allowing redemption prior to maturity. The objective is to increase investor participation and promote transparency within the bond market.

The Liquidity Window facility will apply to future issuances of debt securities through both public and private placements. Issuers may choose to provide this facility, contingent upon approval from their board of directors, with oversight managed by the Stakeholders Relationship Committee or the board itself. It is implied that the facility must be implemented in an objective, transparent, and non-discriminatory manner. Eligible investors, particularly retail investors, may exercise the option after one year from the issue date, with a minimum of 10% of the issue size reserved for such options.

This Circular outline operational procedures, including the valuation of securities, submission of bids, and settlement timelines. Issuers are required to disclose key details, including International Securities Identification Number (ISIN) information and the schedule of liquidity windows, to stock exchanges and depositories. The provisions of the circular are effective from 1 November 2024 and are designed to enhance market integrity and protect investor interests.

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Ratio Decidendi

- Third party cannot be permitted to participate in the pre-admission stage of a petition filed under IBC Section 7 – *NCLT Mumbai*
- Limitation period to prove title by adverse possession commences when possession of the Defendant becomes adverse, and not from the date when Plaintiff gained property ownership – *Supreme Court*
- Auction Sale cannot be unilaterally cancelled without hearing the auction purchaser – *Supreme Court*
- Pendency or subsequent initiation of Arbitration Proceedings is immaterial when the Insolvency Petition is pending for admission – *NCLAT New Delhi*
- High Courts' jurisdiction under Articles 226 and 227 of the Constitution cannot be invoked in relation to the procedural orders passed by an Arbitral Tribunal – *Delhi High Court*

Third party cannot be permitted to participate in the pre-admission stage of a petition filed under IBC Section 7

In the present case, Vijayalaxmi Developers, ('**Petitioner/Intervener**') filed an application under Section 60 of IBC, seeking to intervene at the pre-admission stage of Section 7 IBC proceeding, between LIC Housing Finance ('**Respondent No.1**'/'**Financial Creditor**') against Ishwar Constructions Pvt. Ltd. ('**Respondent No. 2**' / '**Corporate Debtor**'). The Intervener contended that a mortgage over their property was created illegally in favour of the Financial Creditor. Moreso, the Intervener also contended that there existed a collusion between the Financial creditor and the Corporate debtor and the Section 7 Petition was filed solely to undermine the Intervener's rights over the said property.

The Hon'ble NCLT however found no merit in the Intervention Application. Further, the NCLT referred to the judgment of the NCLAT in *Deb Kumar Mujumdar* v. *State Bank of India*, Company Appeal (AT) (Ins.) No. 44/2018 & *Vikas Kumar Garg* v. *DMI Finance Pvt. Ltd. & Anr.*, Company Appeal (AT) (Ins.) No. 113/2021 and held that third-party intervention cannot be allowed at the pre-admission stage of Section 7 IBC proceeding.

The Hon'ble NCLT further held that at the pre-admission stage, the only role of the Adjudicating Authority is to see whether any debts exist and if there is a default on the part of the Corporate Debtor. Once these two conditions are satisfied, the Corporate Debtor is admitted into insolvency.

Based on the aforesaid, the NCLT concluded that the Petitioner had no right to intervene at the pre-admission stage of Section 7 IBC proceeding.

[*Vijayalaxmi Developers and Anr.* v. *LIC Housing Finance Limited & Ishawar Constructions Pvt. Ltd.* – Order dated 8 October 2024 in IP. No. 28/2024 In C.P.(IB)No.336/MB/C-II/2024, NCLT Mumbai]

Limitation period to prove title by adverse possession commences when possession of the Defendant becomes adverse, and not from the date when Plaintiff gained property ownership

In the present case, the Respondent had filed a Civil Suit claiming ownership over the disputed Suit Property based on a registered sale deed *vide* which he had purchased the land from a common cousin of both parties. On account of the same, the Respondent sought recovery of possession along with damages for unauthorized occupation by the Appellant. The Appellants argued that the sale was invalid, asserting that the property was joint family property and that the common cousin had no right to sell the same. However, the Supreme Court noted that while the Trial Court had dismissed the Respondent's suit, the High Court found this conclusion to be flawed, and therefore the decision of the Trial Court was reversed on grounds of inadequate assessment of evidence.

The Hon'ble Apex Court, while upholding the decision of the High Court, highlighted the fundamental requirement of hostile intent to substantiate a claim of adverse possession. The Apex Court noted that the Appellants had contended that they had perfect title over the disputed property through adverse possession, however, they failed to establish when and how their initially permissive possession became adverse to the Respondent's ownership. The Hon'ble Court further noted that a claim of adverse possession requires providing a clear and specific date or period marking the shift from permissive to hostile possession and demonstrating that the adverse possession continued uninterrupted for the required statutory period.

The Hon'ble Apex Court further held that adverse possession is more than mere occupation or control of the property. It requires a clear intent to possess the property against the interests of the true owner, in a manner that is open, notorious, exclusive, and hostile. The Hon'ble Court also opined that mere possession, without an overt claim that openly challenges the owner's title, does not fulfil the legal requirements for adverse possession. Hence, the limitation period to prove title by adverse possession commences when possession of the Defendant becomes adverse, and not from the date when Plaintiff gained ownership of the Property.

Based on the aforesaid, the Supreme Court held that Appellants' claim was based on permissive occupation, which lacked evidence of hostility or intent to repudiate the respondent's title and hence dismissed the Appeal.

[*Neelam Gupta* v. *Rajendra Kumar Gupta* – Judgement dated 14 October 2024, 2024 SCC Online SC 2824]

Auction Sale cannot be unilaterally cancelled without hearing the auction purchaser

In the present case, IDBI Bank ('**Appellant**') conducted an e-auction on 10 April 2018, for a property in Bogaram village, Telangana. Ramswaroop Daliya and others ('**Respondents**') were the highest bidders, offering INR 1,42,50,000, of which they paid INR 36,00,000 (25%) on the auction day. The required balance amount of ₹1,06,50,000 was to be paid to IDBI Bank within 15 days to issue the sale certificate. The Respondents could not deposit the balance due to the bank's refusal to accept the amount, citing various reasons, including a complaint made to the Central Bureau of Investigation (CBI) and an advisory from the Enforcement Directorate (ED) not to release the title deeds. On 24 December 2019, the bank unilaterally cancelled the auction and refunded the deposit, which the Respondents did not encash.

The Hon'ble Court observed that the Respondents had deposited 25% of the bid amount on the day of the auction and were ready and willing to pay the remaining amount. The bank's refusal to accept this payment, coupled with the lack of explicit communication regarding the cancellation of the sale or an opportunity for the respondents to be heard, indicated that the delay was not attributable to the Respondents.

The Hon'ble Supreme Court relied on the judgement of *Varimadugu Obi Reddy* v. *Sreenivasulu* (2023) 2 SCC 168, and interpreted Rule 9(4) of the Security Interest (Enforcement) Rules, 2002, highlighting that the time frame for depositing the balance amount is not sacrosanct and may be extended by mutual agreement between the parties. The Court further emphasized that such extensions must be documented and that a unilateral decision to cancel the auction without notice contravenes the principles of natural justice.

Based on the aforesaid, the Court held that cancellation of the auction sale was deemed unlawful as it was executed without allowing the Respondents to present their case. The Apex Court upheld the High Court's decision, reinforcing that the Appellant acted beyond its authority in cancelling the auction sale and directed the bank to issue the sale certificate to the Respondents after receiving the balance amount.

[*IDBI Bank Ltd.* v. *Ramswaroop Daliya and Others* – Judgement dated October 16, 2024, 2024 SCC Online SC 2878]

Pendency or subsequent initiation of Arbitration Proceedings is immaterial when the Insolvency Petition is pending for admission

Religare Finvest ('**Respondent**') had initiated an Insolvency Proceeding under Section 7 of the IBC against Century Aluminium ('**Appellant**'). Basis the pending arbitration proceeding between the parties, the Appellant sought to defer the IBC proceeding.

The NCLAT held that the presence of an arbitration clause or pending arbitration does not prevent the Adjudicating Authority from considering a Section 7 application under the IBC. The Tribunal emphasized that prioritizing arbitration over the Corporate Insolvency Resolution Process (‘**CIRP**’) would undermine the purpose of the IBC, which is specifically designed for the efficient resolution of insolvency issues. Consequently, despite the arbitration agreement, the CIRP application was allowed to proceed.

The NCLAT also relied on the Supreme Court’s decision in *Indus Biotech Pvt. Ltd.* v. *Kotak India Venture (Offshore) Fund*, where it was established that the Adjudicating Authority must first verify the existence of ‘debt’ and ‘default’ under the IBC before considering any arbitration application. The NCLAT further observed that the present case meets the criteria of debt and default, and hence CIRP was deemed appropriate, aligning with the IBC’s objective of prioritizing corporate solvency over private disputes. Hence, the NCLAT upheld the decision of the NCLT.

[*Century Aluminium Company Limited* v. *Religare Finvest Limited* – Company Appeal (AT) (Insolvency) No. 1719 of 2024, NCLAT Principal Bench, New Delhi]

High Courts’ jurisdiction under Articles 226 and 227 of the Constitution cannot be invoked in relation to the procedural orders passed by an Arbitral Tribunal

A Writ Petition was filed by Mr. Lalit Mohan (‘**Petitioner**’) under Articles 226 and 227 of the Constitution of India, 1950 (‘**Constitution**’) against a procedural order of the Arbitral Tribunal (‘**Procedural Order**’). The said Procedural Order was passed in an ongoing arbitral proceeding between the Petitioner and National Agricultural Co. Federation of India Ltd. (‘**Respondent**’). As per the Procedural Order, the Arbitration Proceeding was adjourned due to the pendency of an insolvency proceeding initiated under Section 94 of the Insolvency Bankruptcy Code, 2016.

Aggrieved by the said Procedural Order, the Petitioner filed the Writ Petition. The Hon’ble Delhi High Court, without going into the merits of the case, held that the Writ Petition was not maintainable. In this regard, the High Court held that the jurisdiction of the Court under Articles 226 and 227 of the Constitution of India, 1950, cannot be invoked where the orders passed by the Arbitral Tribunals are procedural in nature.

In support of the aforesaid, the Hon'ble Court also relied on the judgment of *C.S Construction Company Private Limited and Another* v. *Excelling Geo and Engineering Consultant and Others*, 2024: DHC: 5644 and *Emerald Industries* v. *Tata Aldesa JV*, 4 W.P.(C) 12110/2024 wherein it was evidently established that Articles 226 and 227 of the Constitution of India cannot be invoked where the orders passed by the Arbitral Tribunals are procedural in nature. Accordingly, the Hon'ble Court dismissed the Writ Petition as being non-maintainable.

[*Lalit Mohan* v. *National Agricultural Co. Federation of India Ltd.* – Judgement dated 1 October 2024 in W.P.(C) 13833/2024, CM APPL. 57948-57949/2024, Delhi High Court]

News Nuggets

- Data protection – Government is not exempt from the DPDA Act
- Consumer protection – Guidelines issued to prevent greenwashing
- Consumer protection – Cab aggregator directed to provide refund options to consumers
- Drivers of cab aggregators whether are 'employees' under PoSH – Karnataka HC Division Bench stays Single Bench decision

Data protection – Government is not exempt from the DPDA Act

During a workshop held on 14 October 2024, the Ministry of Electronics and Information Technology (**MeitY**) has informed that the Government shall not be exempted from the obligations imposed in respect of a 'Data Fiduciary' under the Digital Personal Data Protection Act, 2023 (**DPDA Act**). In case of any data-breach or breach of the obligations of a data fiduciary by the Government, it shall also be equally subjected to penalties. The officials present at the workshop also said that the Government is conducting training for its subsidiaries (such as NIC, NICSI, CDAC) for data protection and streamlining compliance mechanism while having certain technical and organisational measures in place before the notification of rules.

[*Source:* Storyboard18, published on 17 October 2024]

Consumer protection – Guidelines issued to prevent greenwashing

The Central Consumer Protection Authority (**CCPA**) has issued the Guidelines for Prevention and Regulation of Greenwashing or Misleading Environmental Claims, 2024 (**Guidelines**) in furtherance to the Guidelines for Prevention of Misleading Advertisements and Endorsements for Misleading Advertisements, 2022, to prevent instances of greenwashing practiced by entities making false claims of being environment or eco-friendly. Amongst other things, the Guidelines also mandate that any environmental advertising claims made by an entity should be backed by verifiable evidence.

[*Source:* Department of Consumer Affairs, issued on 15 October 2024]

Consumer protection – Cab aggregator directed to provide refund options to consumers

The Central Consumer Protection Authority (**CCPA**) has directed a major cab aggregator to provide a clear choice to consumers to opt between a 'bank account transfer' or a coupon when they seek a refund during grievance redressal process. The company as part of its No-Questions-Asked Refund Policy only allowed the option of a coupon code for future use to a consumer opting for refund. The CCPA said that such options only incentivise people to use the company's facility for taking another ride with no other option, thereby violating consumer rights.

[*Source:* Financial Express, published on 14 October 2024]

Drivers of cab aggregators whether are 'employees' under PoSH – Karnataka HC Division Bench stays Single Bench decision

On 30 September 2024, a Single Bench of the High Court of Karnataka had held that the drivers engaged by a cab aggregator shall be deemed as 'employee' for the purposes of the Sexual Harassment of Women at Workplace (Prevention, Prohibition & Redressal) Act, 2013 (**POSH Act**). However, a Division Bench of the High Court has now stayed the order of the Single Bench.

[*Source:* The Telegraph, published on 5 October 2024]

NEW DELHI 7th Floor, Tower E, World Trade Centre, Nauroji Nagar, Delhi – 110029 Phone : +91-11-41299800, +91-11-46063300 ----- 5 Link Road, Jangpura Extension, Opp. Jangpura Metro Station, New Delhi 110014 Phone : +91-11-4129 9811 ----- B-6/10, Safdarjung Enclave New Delhi -110 029 Phone : +91-11-4129 9900 E-mail : Lsdel@lakshmisri.com , Iprdel@lakshmisri.com	**MUMBAI** 2nd floor, B&C Wing, Cnergy IT Park, Appa Saheb Marathe Marg, (Near Century Bazar)Prabhadevi, Mumbai - 400025 Phone : +91-22-24392500 E-mail : lsbom@lakshmisri.com
CHENNAI 2, Wallace Garden, 2nd Street, Chennai - 600 006 Phone : +91-44-2833 4700 E-mail : lsmds@lakshmisri.com	**BENGALURU** 4th floor, World Trade Center, Brigade Gateway Campus, 26/1, Dr. Rajkumar Road, Malleswaram West, Bangalore-560 055. Phone : +91-80-49331800 Fax:+91-80-49331899 E-mail : lsblr@lakshmisri.com
HYDERABAD 'Hastigiri', 5-9-163, Chapel Road, Opp. Methodist Church, Nampally, Hyderabad - 500 001 Phone : +91-40-2323 4924 E-mail :lshyd@lakshmisri.com	**AHMEDABAD** B-334, SAKAR-VII, Nehru Bridge Corner, Ashram Road, Ahmedabad - 380 009 Phone : +91-79-4001 4500 E-mail : lsahd@lakshmisri.com
PUNE 607-609, Nucleus, 1 Church Road, Camp, Pune-411 001. Phone : +91-20-6680 1900 E-mail : lspune@lakshmisri.com	**KOLKATA** 6A, Middleton Street, Chhabildas Towers, 7th Floor, Kolkata – 700 071 Phone : +91 (33) 4005 5570 E-mail : lskolkata@lakshmisri.com
CHANDIGARH 1st Floor, SCO No. 59, Sector 26, Chandigarh -160026 Phone : +91-172-4921700 E-mail :lschd@lakshmisri.com	**GURUGRAM** OS2 & OS3, 5th floor, Corporate Office Tower, Ambience Island, Sector 25-A, Gurugram-122001 phone: +91-0124 - 477 1300 Email: lsgurgaon@lakshmisri.com
PRAYAGRAJ (ALLAHABAD) 3/1A/3, (opposite Auto Sales), Colvin Road, (Lohia Marg), Allahabad -211001 (U.P.) Phone : +91-532-2421037, 2420359 E-mail : lsallahabad@lakshmisri.com	**KOCHI** First floor, PDR Bhavan, Palliyil Lane, Foreshore Road, Ernakulam Kochi-682016 Phone : +91-484 4869018; 4867852 E-mail : lskochi@laskhmisri.com
JAIPUR 2nd Floor (Front side), Unique Destination, Tonk Road, Near Laxmi Mandir Cinema Crossing, Jaipur - 302 015 Phone : +91-141-456 1200 E-mail : lsjaipur@lakshmisri.com	**NAGPUR** First Floor, HRM Design Space, 90-A, Next to Ram Mandir, Ramnagar, Nagpur - 440033 Phone: +91-712-2959038/2959048 E-mail : lsnagpur@lakshmisri.com

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