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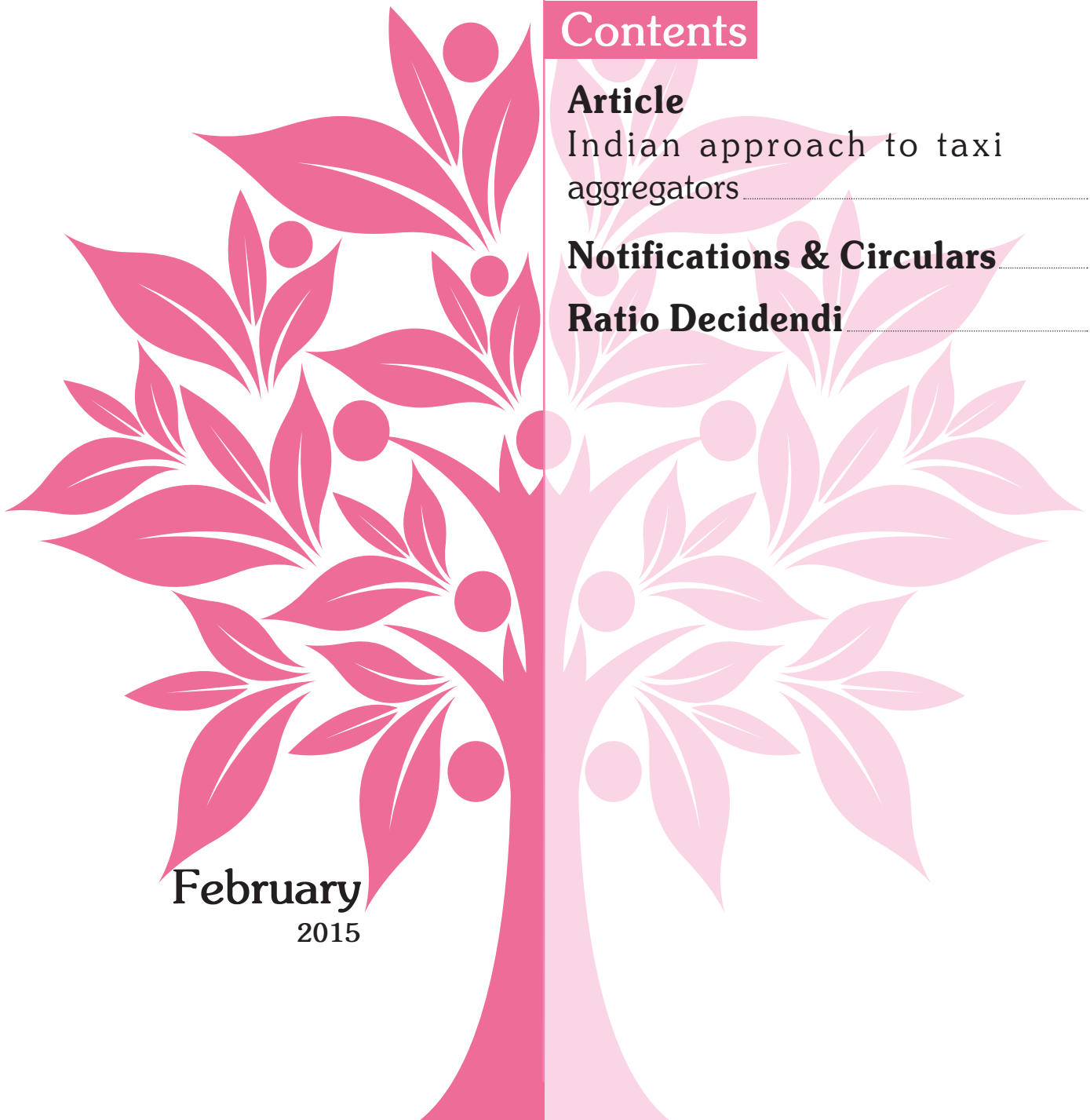
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Article

Indian approach to taxi aggregators

By **Noorul Hassan**

India is witnessing the exceptional growth of radio taxis as a convenient means of public transport that is safe, efficient and reliable. Estimates indicate that the market for radio taxis is US \$6-\$9 billion, with over 600,000 participating cabs. The sector is attracting large private equity funding with a prominent player, Ola cabs recently raising \$ 210 million (about Rs. 1,260 crores) from Softbank Corp and Taxi for Sure around \$45 Million while Uber has also committed almost \$400 million to expand its network in India. All the aforesaid three companies are not operating as radio taxis but under the new system of technology app based taxi aggregators.

Business structure

The basic business structure of app based taxi services is quite different from normal radio taxis. The taxi aggregators do not own or directly operate taxis unlike radio cab companies like Meru or Easy Cabs. Instead, it offers a technology platform to connect passengers with drivers who own cars or cab operators, including those who do not have taxi licenses. The aggregator model is asset light with no employees or owned taxis. They connect individual or small-scale fleet owners of taxis with customers through apps on mobile. To book a cab, the user has to download the app in mobile, fill in the details and the aggregator company will match the details with the available cabs and send the information on availability of taxis.

To cover the traditional taxi operators several

states have brought different radio taxi schemes under which license/ permit is granted to the service providers. These schemes typically cover service providers that own a fleet of vehicles which can be booked by placing a call to the service centre that will in turn track its own nearest taxi and send it to the customer.

Delhi – Radio Taxi Scheme:

After the recent unfortunate incident that happened in Delhi allegedly in a Uber taxi, the Transport Department of Government of NCT of Delhi has amended its Radio Taxi Scheme – 2006 (Modified RTS), and mandated taxi cab aggregators to obtain a license, valid for 5 years and subject to renewal by the Transport Department, bringing them on an equal footing with the traditional radio taxi service provider/operators.

Further the Modified RTS has laid down certain stringent norms for taxi operators (“licensees”) that, *inter alia*, includes:

- Requirement to set up a company registered under the Companies Act in Delhi with an address to be provided to the Transport department and whose object is to provide public transport services;
- Complying with the Motor Vehicles Act, 1988 and Information Technology Act, 2000;
- Maintaining a call center or operating through an authorised call center or web portal;

- Minimum fleet of 200 radio taxis either owned or through an agreement with individual taxi permit holders;
- Mechanism for redressal of grievances;
- Fare in excess of the fare prescribed by the Transport Department should not be charged;
- Adherence to the norms prescribed for drivers, induction schedule, suspension/cancellation of the License, appeal mechanism and other norms.
- Vehicles to be used as taxis must be fitted with the following: GPS/GPRS based tracking devices which are in constant communication with the licensee's control room, Display panel showing the path traversed, first aid box and panic button which can transmit distress signal to the police as well as the licensee, etc.

Legal framework

The Motor Vehicles Act, 1988 (MV Act)

The Radio Taxi Schemes framed by different states are issued under the MV Act and were designed only to cover traditional taxi operators/radio taxi service providers. However the Modified RTS issued by the Government of Delhi has also brought within its purview the aggregator of radio taxis, requiring them to comply with all the requirements as that are applicable for radio taxi service providers. The MV Act primarily governs issues of driving license, registration of motor vehicles, stage carriages, transport undertakings, etc. However, the MV Act does not specifically cover aggregators of taxis who neither own any cab nor has any driver on its rolls.

Road Transport and Safety Bill (RTS Bill)

With the objective of providing a framework for the safety of all taxi customers the outdated MV Act will be replaced with a new one.. The draft RTS Bill contains a specific section that allows the appropriate authorities (national or state transport authority) to seek information such as total number of journeys, structure of fares and total distance covered. Once this Bill is legislated into an Act, it needs to be seen as to how the local transport authorities interpret the same to regulate the operations of the aggregator.

Information Technology Act, 2000 (IT Act)

Services provided under e-platform falls within the ambit of the IT Act and so does the taxi aggregator services through mobile apps. Since aggregators receives data from users and transmit it to the cab operators, they shall be considered as 'intermediary' under the IT Act. As per the IT Act read with Intermediaries Rules, the aggregator has to act diligently while discharging his duties under the Act and Rules. Further, if the aggregator collects personal data such as financial information such as bank accounts or credit/ debit card details of the users, the aggregator has to ensure reasonable security practices and procedures of the said data.

Foreign Exchange Management Act, 1999 (FEMA) and Foreign Direct Investment (FDI) Policy

Most of these aggregator companies have received foreign investment. The business model adopted by the aggregator companies envisages that the invoice is directly raised on the app users/ customers for availing the services after charging service taxes. The restrictions on

e-commerce in the FDI guidelines apply only to trading and selling of goods and there is no restriction or prohibition on offering a marketing platform for services, hence allowed under the automatic route.

Payment and Settlement Systems Act, 2007 (PSS Act)

If the aggregator also operates any payment system (involving clearing, payment or settlement of payment between payers and beneficiary) such as systems that enable credit/ debit/ smart card operations, then it has to obtain authorization from RBI. Further, if the aggregator is acting as an 'intermediary' like collecting monies from customers and facilitating transfer to merchants using any online mode, then the aggregators have to comply with the RBI's Directions on Intermediaries.

Consumer Protection Act, 1986 (CP Act)

The CP Act is basically applicable when there is a 'deficiency in service' or 'defect in goods' or indulging in 'unfair trade practice'. However, provision of any service free of charge does not constitute 'deficiency in service'. If the aggregator is not charging the users, the users may not really be able to sue the aggregators for 'deficiency in service' of the cab operators, particularly when the 'cab operators' raises invoices on the users. Further, in the case of goods 'trader' includes distributor of goods, however, there is no corresponding reference to distributor of services.

Indian Contract Act, 1872 (IC Act)

In order to become a validly enforceable contract, an agreement should meet valid pre-requisites under the IC Act which among other

things include lawful consideration, competency of parties and free consent of the parties. In contracts entered in the online platform, monitoring the fulfillment of these pre-requisites becomes a challenge.

Criminal Procedure Code, 1973

In order to regulate the operations of the web based cab aggregators in Kolkata, an order was issued for enrollment of the cab operators under the provisions of Section 144 of the Criminal Procedure Code, 1973. The power under this section can be exercised in urgent cases of nuisance or apprehended danger. An order issued under this Section would only be valid for a period 2 months, unless the State Government considers it necessary may extend the period not exceeding 6 months from the date of its issue.

Conclusion

The Modified Radio Taxi Scheme introduced by the Delhi Government is only an initial step from a local transport authority of a union territory. Though other states have similar schemes for taxi operators, they do not yet cover aggregators. However, other states and territories may also fall in line and adopt similar rules in their areas to regulate the hitherto unregulated aggregator industry. It becomes extremely important for the aggregators to work within the allowed legal framework particularly since they are operating mobile based apps which have very wide use in the present day world. Even though it becomes extremely difficult to make a law on each and every activity carried out in India, an exclusive law on e-commerce activity is recommended, particularly considering the growing market share in the economy.

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Notifications & Circulars

Small Company and acquisition of securities by banking company -

Certain amendments: Definition of 'small company' has been amended to provide that both the conditions (threshold for paid-up share capital and turnover) prescribed therein have to be fulfilled as against any one required earlier. Ministry of Corporate Affairs has issued Companies (Removal of Difficulties) Order, 2015, dated 13-2-2015 which amends Section 2(85) of the Companies Act, 2013 and substitutes word 'or' with 'and'. This Order notes that companies which, met one of the criteria but exceeded the monetary limit in respect of second criteria excessively were also getting classified as 'small companies'. Further, in respect of acquisition of securities by banking company or an insurance company or a housing finance company, exemption has been provided from provisions of Section 186 [except sub-section (1) thereto] to such acquisitions in the ordinary course of business of such companies.

CSR activities through a company set up along with other company, allowed:

A company can undertake its Corporate Social Responsibility through a company established along with other company or latter's holding or subsidiary or associate company. Ministry of Corporate Affairs in this regard amends Rule 4(2) of the Companies (Corporate Social Responsibility Policy) Rules, 2014. Hitherto, CSR activities could be undertaken only through a registered trust or a registered society or a company established by the company or its holding or subsidiary or associate company under

Section 8 of the Companies Act. Notification No. G.S.R. 43(E), dated 19-1-2015 has been issued in this regard.

Resignation of Directors - Form DIR-11 can be filed by authorized person:

Companies (Appointment and Qualification of Directors) Rules, 2014 have been amended to add a proviso in Rule 16 of the said Rules, providing for filing of Form DIR-11 by the person authorized by the foreign director of company resigning from his office. According to the amendment brought in force from 19-1-2015 by Notification G.S.R. 42(E), such procedure can be followed if the company has already filed Form DIR-12 with the Registrar under Rule 15. Practicing Chartered Accountant, Cost Accountant and Company Secretary, or any other resident director of the company can be authorized to file Form DIR-11 on behalf of foreign director intimating reasons for the resignation.

Maintenance of books of account at address other than registered - Intimation to Registrar:

Ministry of Corporate Affairs has amended Companies (Accounts) Rules, 2014 by inserting new Rule 2A prescribing new Form AOC-5 relating to notice of other address at which the books of account are to be maintained by the company. Sub-section (1) of Section 128 of the Companies Act, 2013 provides for maintenance of books of account at the registered premises but proviso thereto states that if all or any of the books of account and other relevant papers are kept at other premises

in India, a notice has to be filed with the Registrar giving full address of the other place. Notification dated 16-1-2015 also prescribes Form AOC-5 for the purpose.

FPI investments in Govt./Corporate securities - Conditions revised: Foreign Portfolio Investors (FPI) have been permitted to invest in government securities, the coupons received on their investments in government securities. SEBI has issued Circular CIR/IMD/FIIC/2/2015, dated 5-2-2015 in this regard which also states that such investments will be kept outside the applicable limit for investments by FPIs in the government securities. Reserve Bank of India has also issued A.P. (DIR Series) Circular No. 72, dated 5-2-2015 for this purpose.

Further, another Circular CIR/IMD/FIIC/1/2015, dated 3-2-2015 issued in respect of such investments in corporate debt securities, prescribes additional restrictions for such investments. It is

stated that all future investments within the corporate debt limit category, are required to be made in corporate bonds with a minimum residual maturity of three years. However, it is stated that there will be no lock-in period and FPIs shall be free to sell the securities to domestic investors. This SEBI Circular has been issued in pursuance of RBI A. P. (DIR Series) Circular No. 71, dated 3-2-2015.

Import remittances - Form A-1 not required: Reserve Bank of India has dispensed with the requirement of submitting request in Form A-1 to the AD Category-I Banks for making payments towards imports into India. RBI A. P. (DIR Series) Circular No. 76, dated 12-2-2015 issued for this purpose however states that banks would be required to obtain all requisite details from the importers and satisfy itself about the bonafides of the transactions before effecting the remittance.

Ratio Decidendi

Competition law - Dominance and relevant market: Competition Commission of India (CCI) in two separate orders pronounced this month, has set aside allegations of abuse of dominance, noting absence of any cogent material submitted by the informants.

In the first case the CCI noted that the opposite party was having very negligible share in the passenger car segment in India which is dominated by a number of players. It was held that in dealership network also, Opposite Party (OP) will not have more market share than that of Maruti, Hyundai, Tata, etc., hence the opposite party cannot be said to be a dominant player

and as such the question of abuse of dominance will not arise. The informant was aggrieved by the termination of its dealership agreement by the OP and appointment of another dealer in the same geographical area of its showroom. The Commission was of the opinion that the issues arising out of and related to the dealership agreement between the informant and OP such as unilateral terms and conditions, bank guarantee, high penal interest, higher sales target, etc., do not disclose any competition concern. [*Bhasin Motors (India) Private Limited v. Volkswagen Group Sales India Private Limited*

–Order dated 11-2-2015 in Case No. 86 of 2014, Competition Commission of India]

In another case, in respect of abuse of dominance by authorities constituted under Uttar Pradesh Industrial Area Development Act, 1976, for the purpose of acquiring land in their notified area by the Government of Uttar Pradesh, the Commission has held that alleged conduct of the Opposite Parties like allotment of land on leasehold basis, bribery etc., did not appear to fall in the category of abuse under Section 4 of the Competition Act. The Commission was of the view that it was not necessary to define the relevant market. The informant was primarily aggrieved by the alleged allotment of the land on leasehold basis by the Opposite Parties. [*Sanjay Goel v. CEO, Greater Noida Industrial Development Authority – Order dated 4-2-2015 in Case No. 96 of 2014, Competition Commission of India*]

Winding-up of company - Applicability of BIFR provisions at post winding-up stage: Calcutta High Court has held that provisions relating to sick companies i.e. Sick Industrial Companies Act, 1985 (SICA) would not be applicable in case of a company where winding up order has already been passed by the company court. The court in this regard noted that the order of winding up was passed on a date when there was no reference pending. The court agreed with the Supreme Court's view in the case of *Tata Motors* [2008 (7) SCC 619] that SICA provisions would have overriding effect and winding up petition would be liable to be stayed till BIFR or AAIFR is seized of the matter or a scheme framed by the said authorities is in operation. It, however, held that concept of

overriding effect would only come when there is a conflict in law.

Further, noting that company court *suo motu* would have no role to play for revival after the order of winding up but could consider any scheme suggesting revival and in such process the court may stay the order of winding up, the court held that Official Liquidator being the only custodian of the company during winding up would have no obligation to do so and that the erstwhile management could not have any control over the company for the purpose of making such suggestion. It was also noted that if BIFR ultimately recommends winding up of the company, the same would be superfluous inasmuch as winding up order has already been passed. [*In Re: Kamalapur Sugar and Industries Ltd. – Judgement dated 29-1-2015 in A.P.O. No. 450 of 2014, C.P.No. 241 of 2009, Calcutta High Court*]

Electricity law - Revision of distribution loss trajectory in mid-term review: Electricity Appellate Tribunal has set aside the revision (lowering) of the distribution loss trajectory in the mid-term review undertaken by the State Commission, of the business plan and Annual Revenue Requirements of the appellant power company. Earlier the State Commission had approved the distribution loss of 5.15% for the entire Multi Year Tariff (MYT) period, however in its mid-term review lowered the loss to 4.5% for two financial years. Noting that the MYT framework was devised to give predictability and certainty and to incentivize efficiency in performance of the distribution licensee, the Tribunal held that proviso to Regulation 21.1 of the MYT

Regulations, 2011 cannot be relied upon by the State Commission to revise the trajectory for a controllable parameter (distribution losses), in the mid-term review based on the past performance of the licensee during the control period. Reliance placed in this regard by the State Commission on Regulation 7 (Inherent Power of the Commission) and Regulation 4 (ceiling norms), was also rejected

by the Tribunal which taking note of Regulation 25 which provides for a mechanism for sharing of gains or losses on account of controllable factors, held the revision to be contrary to Section 61(e) of the Electricity Act, 2003, the Tariff Policy and the MYT framework. [*Torrent Power Limited v. Gujarat Electricity Regulatory Commission* – Judgement dated 16-2-2015, Appellate Tribunal for Electricity]

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