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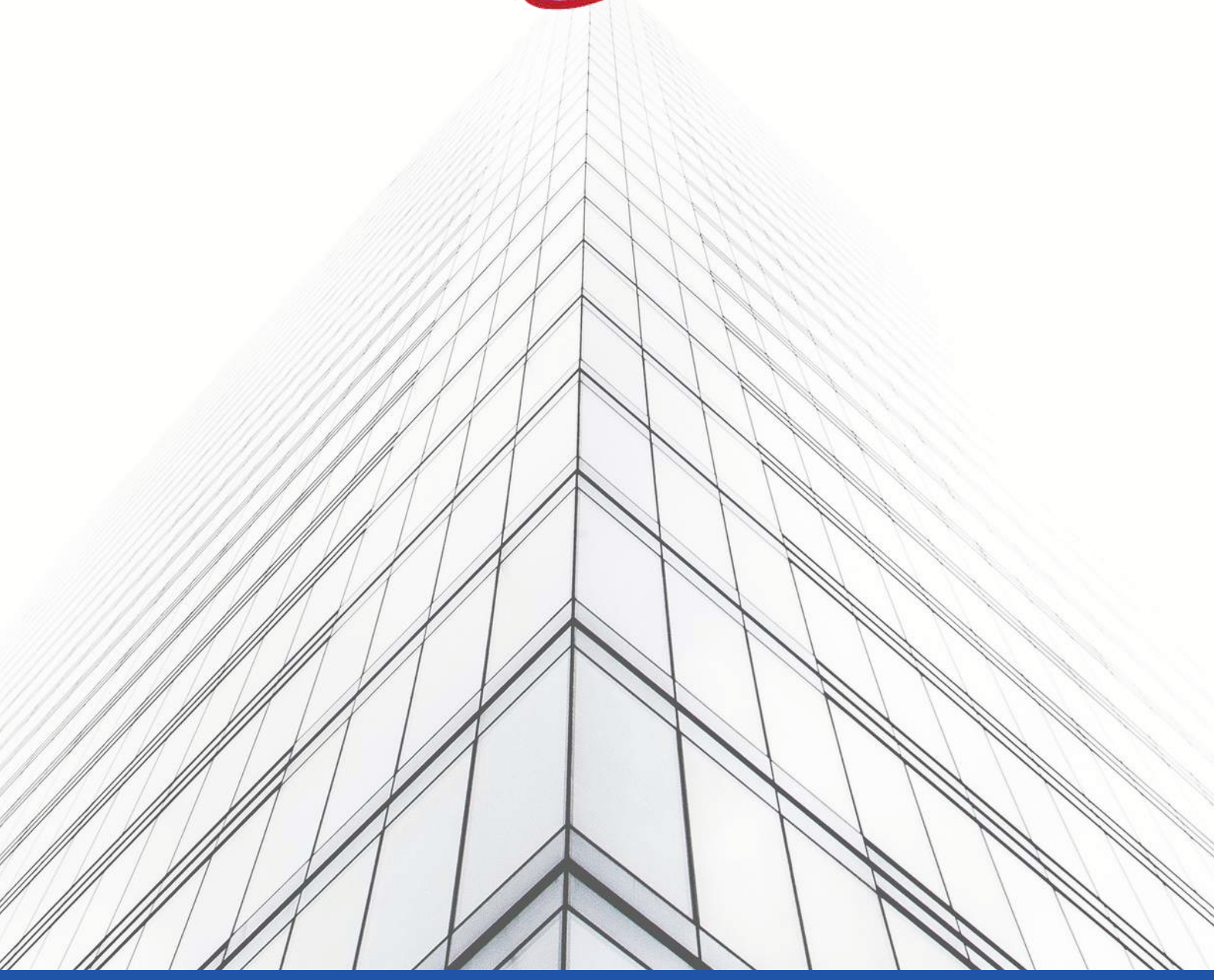
Official Newsletter

CLASIS LAW



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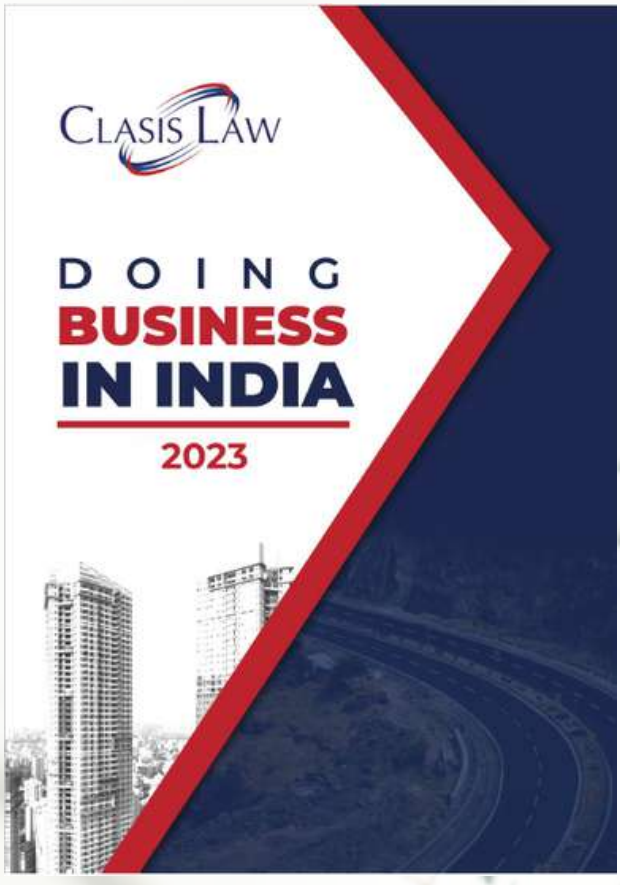
CLASIS LAW

DOING BUSINESS IN INDIA

We are pleased to share the **Fifth Edition** of our e-book titled

"Doing Business in India".

The book intends to give the reader an overview of the various aspects of doing business in India including but not limited to the applicable legislations, compliances and processes.



Please scan the QR code above or Click Here to download the e-book. Alternatively, you may write to us at info@clasislaw.com for the copy.

FEATURED ARTICLE

Navigating the Currents: How New Data Protection Act Will Impact E-commerce sector in India

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Introduction

India's e-commerce sector is poised for explosive growth, with projections estimating it to reach a staggering $350 billion by 2030.*(1)* But amidst this exciting trajectory, a rising tide of data protection regulations is reshaping the digital landscape, posing both challenges and opportunities for e-commerce players. This article delves into the impact of the Digital Personal Data Protection Act, 2023 (DPDP Act) on the Indian e-commerce sector, exploring the intricate legal framework, key considerations, and strategic approaches businesses can adopt to thrive in this new era.

The Legislative Landscape: Understanding the DPDP Act

The landmark DPDP Act, stands as the cornerstone of data protection regulation in India. The new data privacy norms have not come into force yet. This comprehensive framework establishes individual rights to protect their personal data, outlining principles for collection, storage, processing, and transfer. E-commerce businesses in India need to adhere to the Consumer Protection (E-Commerce) Rules, 2020, alongside the Information Technology Act, 2000 and its allied rules. For the e-commerce sector players, the DPDP Act translates into an additional set of obligations, some of which include:

- **Consent:** Obtaining specific, informed, unconditional, unambiguous with a clear affirmative action and freely given consent before collecting and processing the user personal data becomes paramount.

- **Data Minimization:** Collecting and processing only the personal data necessary for specified purposes and/or for the prescribed legitimate use is essential. E-commerce businesses must avoid unnecessary data collection practices.

- **Transparency:** The DPDP Act provides for certain rights of the user to whom personal data relates, including, the right to obtain certain information about their personal data, right to correction, updating or completion of his/her personal data, right to appoint a nominee, right to grievance redressal and right to have personal data erased. E-commerce entities need to provide clear and accessible information about data practices through their privacy policies.

- **Data Security:** Implementing robust security to protect user data from authorized access, breaches, and leaks is imperative.

- **Data Localization:** The DPDP Act permits cross-border transfer of personal data. The e-commerce player will have to be mindful of the countries to be notified by the government to which the personal data cannot be transferred for processing. Apart from this, the sectoral laws and regulations will need to be complied.

Challenges and Opportunities: Balancing Compliance and Growth

Navigating this new regulatory landscape poses challenges for e-commerce websites as follows:

- **Compliance Costs**: Implementing robust data governance frameworks and data security safeguards, requires significant investments in technology, training, and legal expertise.
- **Operational Complexities**: Managing user consent, responding to data subject requests, and at the same time ensuring compliance with sectoral laws and regulations can add operational burdens.
- Targeting and Personalization: Targeting advertising and personalizing customer experience may become more challenging due to stricter consent requirements and data minimization principle.

However, these challenges also present opportunities such as:

- **Building Trust and Brand Loyalty**: Demonstrating strong data privacy practices fosters trust and loyalty among customers and investors, creating a competitive advantage.
- **Data-Driven Innovation**: Embracing data minimization and transparency can encourage responsible data practices, leading to more innovative and ethical data-driven solutions.
- **Improved Data Quality**: Focusing on collecting and processing only relevant personal data can lead to improved data quality and helps in facilitating better decision-making.

Strategic Approaches for a Data-Compliant Future

E-commerce businesses can adopt several strategies to successfully navigate the data protection landscape, some of which are as follows:

- **Conduct a Data Privacy Audit**: Assess current data practices against the DPDP Act's requirements, identifying areas for improvement. This also includes reviewing the existing agreements with data processors/third parties and making necessary changes therein to align the same with the DPDP Act.
- **Develop a Comprehensive Data Governance Framework**: Establish clear policies, procedures, and controls for data collection, storage, use and sharing.
- **Invest in Data Security Technologies**: Implement robust data security measures to protect user data from data breaches.

- **Prioritize Transparency and Consent**: Provide clear and accessible information about data practices and obtain informed consent from users. Further giving notice(s) to the user whose personal data has been collected, prior to the DPDP Act coming into force.

- **Leverage Data-Minimization Techniques**: Refine data collection practices to gather only the minimum data necessary for specific purposes.

- **Invest in Data Localization Solutions**: Explore secure and compliant data storage options within India, if applicable.

- **Seek Expert Guidance**: Partner with data privacy professionals to ensure compliance and navigate complex regulations.

Conclusion: Embracing the New Paradigm

Data protection regulations are not just compliance hurdles, but they represent a shift towards a more user-centric and ethical digital ecosystem. By understanding the intricacies of the data protection landscape, incorporating robust data governance practices, and embracing transparency, e-commerce businesses can not only remain compliant but also build trust, loyalty, and sustainable growth in the emerging data-driven future. E-commerce sector (including vendors, sellers etc.) would require carefully evaluate the provisions of the DPDP Act and rules thereunder (to be notified) in order to determine additional compliance. Non-compliance would result in severe penalties and strict government actions. The e-commerce players will have to revisit their data protection policies to ensure that they are fully compliant with the DPDP Act. Further, they will also need to strengthen agreements with vendors, third party service provider and seller in order to comply with the DPDP Act.

For further information on this topic please write to **Mr. Dinesh Gupta** (dinesh.gupta@clasislaw.com) and **Ms. Soumya Kumari** (soumya.kumari@clasislaw.com).

Footnote

1 https://www.ibef.org/industry/ecommerce

LEGAL UPDATE

NCLT can recall an order of approval of resolution plan if same does not meet the parameters laid down in the Insolvency and Bankruptcy Code, 2016

Introduction

In a recent Landmark Judgment*(1)*, the Supreme Court held that if the National Company Law Tribunal **("NCLT/ Adjudicating Authority")** while approving the resolution plan, didn't take into consideration the parameters referred under Section 31(2)*(2)* of the Insolvency and Bankruptcy Code, 2016 **("IBC")** read with regulation 37 and 38*(3)* of the CIRP Regulations, 2016, then the same may be recalled and sent back to the Committee of Creditors **("COC")** for resubmission.

Facts

The Appellant by way of lease allotted land to M/s JNC Construction (P) Ltd **("Corporate Debtor")**, for a residential project by charging premium, payable in instalments after initial moratorium of 24 months. The Corporate Debtor committed a default in making the payment of instalments. A demand cum pre-cancellation notice was served upon the Corporate Debtor. Thereafter, Company Petition was filed for initiating Corporate Insolvency Resolution Process **("CIRP")** against the Corporate Debtor. The said Company Petition was duly admitted and claims were invited. The Appellant submitted its claim as a financial creditor. However, the Resolution Professional **("RP")** treated the Appellant as an operational creditor and, requested the Appellant to submit its claim in Form B. The Appellant did not submit its claim afresh as an operational creditor. Subsequently, the COC approved the plan and same was also approved by the NCLT vide its order dated August 4, 2020. Being aggrieved by the decision, an application questioning, inter alia, the resolution plan, the decision of the RP to treat the Appellant as an operational creditor was filed. The Appellant also filed another Application for recalling of NCLT order dated August 4, 2020. The Appellant in both the applications pleaded that:-

(a) there was a gross error on the part of RP to treat the Appellant as an operational creditor;

(b) the resolution plan erroneously states that Appellant did not submit a claim;

(c) the Appellant being owner of the land with statutory charge over assets of the Corporate Debtor ought to have been given top priority for its dues as a secured creditor; and

(d) no opportunity of hearing was given to the Appellant by the COC.

Therein, NCLT rejected the Appellant's claim mainly for the following grounds:-

(a) the Appellant took no steps against the RP while being aware of the initiation of the CIRP,

(b) claim of the appellant cannot be taken into consideration due to completion of CIRP consequent to approval of the plan.

The appeal preferred by the appellant before National Company Law Appellate Tribunal **("NCLAT")** was also dismissed **("Impugned Order")**. Thereafter, being aggrieved by the decision of the NCLAT, the Appellant filed the present appeal before the Hon'ble Supreme Court under Section 62***(4)*** of the IBC.

Contention of the Appellant

- The Appellant contended that it had submitted its claim with proof which was not taken into consideration.
- The Appellant was neither informed of the meetings of the COC nor it was designated in the resolution plan as secured creditor and owner of the land with statutory rights, thereby it violated Section 30(2)***(5)*** of the IBC.
- The proceedings up to the stage of approval of the resolution plan by the Adjudicating Authority were ex parte;
- The RP misrepresented that the Appellant had submitted no claim when, otherwise, a claim was submitted of an amount higher than what was shown outstanding towards the Appellant.

Contention of the Respondent

On behalf of Prabhjit Singh Soni & Anr. **("Respondents")**, it was contended that:-

- The Appellant had pressed its case only on the ground that it was a financial creditor, once this plea is found unsustainable, no relief can be granted to the Appellant, as commercial wisdom of the COC is not justiciable.
- NCLT has no power to recall its order of approval, the remedy for the Appellant was to file an appeal within the time provided by the statute.
- Inordinate delay on the part of the Appellant in questioning the order of approval.

Issues before the Supreme Court

The Supreme Court after hearing the rival contentions raised by the parties, framed certain issues for determination, some of which are elaborated below:-

Issue (a) Whether in exercise of powers under-section (5) of Section 60, the NCLT can recall its order of approving the resolution plan?

Issue (b) Whether the resolution plan put forth by the resolution applicant did not meet the requirements of sub-section (2) of Section 20 of the IBC read with Regulations 37 and 38 of the CIRP Regulations?

Analysis and Judgment

While dealing with the Issue (a), the Supreme Court observed that the National Company Law Tribunal Rules, 2016 **("NCLT Rules")** are *pari materia*, with Section 151(6) of Civil Procedure Code, which preserves inherent powers of the Tribunal to make such orders as may be necessary for meeting the end of justice or to prevent abuse of process. The Supreme Court considered the recent decision of NCLAT(7), wherein it has been held that the power to recall of its judgment is inherent in the Tribunal and is preserved under Rule 11(8) of the NCLT Rules, 2016, which can be exercised as and when any procedural error is committed in delivering the judgment. While, observing the above-mentioned judgment of the NCLAT, the Supreme Court noted that the recall application should be allowed mainly on the ground that the Appellant was not informed of the meetings of the COC, RP

misrepresented that no claim was filed by the Appellant and Resolution Plan being approved without considering the parameters referred under Section 31(2) of the Code. While dealing with the issue (b), the Supreme Court held that the resolution plan did not meet the requirements of Section 30(2) of the IBC read with regulations for the following reasons:-

i. Resolution Plan disclosed that the Appellant didn't submit its claim Form, while the same was duly filed by the Appellant as Financial Creditor along with the proof of claim. In pursuance to the same, the Hon'ble Court also held that the Form in which the claim is submitted is directory. What is necessary is that the claim must have support from proof, which was duly submitted by the Appellant herein.

ii. The resolution plan did not place the Appellant in the category of secured creditor, in respect of the amount payable to it, a charge was created on the assets of Corporate Debtor.

iii. The resolution plan conceived utilisation of land owned by the Appellant, however, it failed to envisage necessary approvals of the statutory authority which is an important aspect on the feasibility of the plan.

In conclusion, the order passed by the NCLT approving the resolution plan was set aside. The Court ordered for the resolution plan to be sent back to the CoC for re-submission after satisfying the parameters set out under IBC.

Footnotes

1. Greater Noida Industrial Development Authority v. Prabhjit Singh Soni, Civil Appeal No. 7590 of 2023
2. Approval of resolution plan
3. Mandatory contents of a resolution plan
4. Appeal to Supreme Court
5. mandatory compliances in a resolution plan that are to be examined by the Resolution Professional (RP)
6. Inherent Powers of the Court
7. Union Bank of India v. Dinakar T. Vekatasubramanian
8. Inherent Powers

Human Behaviour and the Right to Privacy vis-à-vis Copyright Protection

Introduction

The crux of the present case(1) revolved around the Appellant's (orig. Defendant) **("T-Series")** intention to produce a film titled *"Dear Jassi"* based on the story of Jaswinder Kaur Sidhu, a.k.a. Jassi. T-Series claimed to have acquired the rights to make the film from a book written by a Mr. Fabian Dawson of Canada, by paying an authorization fee of approximately 5000 C$. They subsequently produced the film based on this book.

However, Respondent No. 1 (orig. Plaintiff) **("Dreamline Reality")**, who alleged to have purchased the rights to make a film from Respondent No. 5 i.e., Sukhwinder Singh, Jassi's husband, filed a suit for injunction against T-Series. As Dreamline Reality claims to have purchased this permission from Sukhwinder, they asserted the right to make the film and hold a copyright over Sukhwinder's story, thereby filing the suit. Concurrently, Dreamline Reality also applied for an interim injunction restraining the T-Series from exhibiting the film till final disposal of the Suit. This application was allowed by the trial court, leading the T-Series to file an appeal against the said order before the Hon'ble High Court of Punjab & Haryana **("Court")**.

Contentions of the Parties

Appellant's contention in brief:

- T-Series had acquired bona fide rights to produce the film from the individual holding intellectual property rights over the book on which the film was based. The story of Jassi was widely publicized by the media and had been the subject of five previous films. Therefore, the information used in the film was already in the public domain.

- T-Series purchased rights directly from the book's author, negating any claim by Dreamline Reality. Section 13 of the Copyright Act, 1957 **("Act")** was cited to argue that copyright exists only for accomplished intellectual works, which neither Dreamline Reality nor Sukhwinder claimed to have created.

- Considerable financial investment was made by T-Series and they already completed the film. T-Series relied on the Supreme Court judgment in *R. G. Anand vs. M/s. Delux Films & others(2)*, asserting that common aspects like historical or legendary facts cannot be copyrighted.

- *Krishna Kishore Singh vs. Sarla A. Saraogi and others(3)* was also cited to argue that historic facts, news reports, and similar materials in the public domain lack originality and are ineligible for copyright. *Ramgopal Verma vs. Perumalla Amrutha(4)* was relied on to emphasize that events already in the public domain cannot be subject to privacy claims. Lastly, T-Series argued that the interim relief granted to Dreamline Reality by the trial court resembled the final relief sought, rendering the trial court's order erroneous.

Respondent's contention in brief:

- T-Series' arguments were countered by asserting that the film produced by them depicted the life story of Jassi, who was the wife of Respondent No. 5, Sukhwinder. Thus, the film inherently included part of Sukhwinder's life story, necessitating his permission.

- Dreamline Reality had purchased Sukhwinder's permission through a contract prior to the T-Series' film production. While some aspects of the story were in the public domain, crucial details about the relationship between Jassi and Sukhwinder were not, particularly those about her murder.

- The right to privacy was emphasized, referencing *K.S. Puttaswamy vs. Union of India(5)*, which affirmed an individual's control over their life and image. *R. Rajagopal alias R. R. Gopal and another vs. State of T. N. & others(6)* was also cited in this regard.

- Dreamline Reality's efforts in preparing the screenplay and conducting interviews constituted initiation of the cinematographic film's production, as per Section 16 of the Act.

- Dreamline Reality rejected the T-Series' argument that copyright expires upon the subject's death, asserting that Sukhwinder, from whom Dreamline Reality acquired the rights, was still alive. Thus, they concluded that the trial court's decision to grant the stay was valid.

Analysis and Finding of the Court

Upon examination of the relevant provisions of the Act and appreciation of the judicial jurisprudence on the subject, the Court provided the following observations and conclusions:

- Copyright can only be claimed over an existing work, which requires the investment of intelligence, creativity, or effort by an individual. Mere existence of facts or events does not constitute a work eligible for copyright protection. In this case, Dreamline Reality claimed copyright over Sukhwinder's life story, which does not meet the criteria for copyright protection as it lacks originality, creative effort and/or any steps for tangible materialization of an idea.

- The story of Jassi, including her murder, was extensively covered in court records, media, and previous films, placing it in the public domain. Dreamline Reality cannot claim copyright over facts already in the public domain. Additionally, Dreamline Reality's prayer in the suit was specifically directed towards Jassi's life story, not Sukhwinder's, further weakening its claim. It was particularly observed that the film made by T-Series was depicting the series of facts constituting common human behaviour. The Court emphasized that no right could be claimed qua facts constituting human behaviour which is already in the public domain.

- The Court found that the right to privacy, as cited by Dreamline Reality, did not automatically confer copyright protection. Even if Sukhwinder had privacy rights, it did not necessarily translate to copyright claims unless he qualified as a celebrity with commercial value, which he did not, as per the Court's assessment.

- The Court opined that the right to privacy is subject to legal regulation and did not unconditionally extend to commercial exploitation. Only aspects intrinsic to an individual's existence and choices may be protected under privacy rights, not each and every aspect of their personality and being.

- Celebrity rights or publicity rights may exist outside the Act but are applicable only to individuals who have achieved a distinct commercial identity, which Sukhwinder lacked. Therefore, Dreamline Reality's attempts to claim such rights were deemed unsuccessful. Mere existence of certain facts constituting human conduct cannot be made a subject matter over which claim of copyright can be asserted by any person.

- Ultimately, the Court found that Dreamline Reality did not have a prima facie case in its favour. Moreover, since film exhibition is primarily for commercial purposes, the Court clarified that any potential losses to Dreamline Reality could be compensated financially by T-Series, in the event of a contrary final decree. Thus, there was no justification for granting the injunction against T-Series.

In light of the above findings, the Court concluded that the trial court's order was unsustainable and, therefore, allowed the appeal, setting aside the impugned order dated 23.11.2023 passed by the trial court.

Footnotes

1. T-Series v. Dreamline Reality Movies, Mohali, FAO No. 6386 of 2023, decided on February 22, 2024 by the Hon'ble High Court of Punjab & Haryana
2. (1978) 4 SCC 118
3. (2021 SCC OnLine Del 3146)
4. (2020 SCC OnLine TS 3018)
5. (2017) 10 SCC 1
6. (1994) 6 SCC 632

JUDGEMENTS

In the matter of Seva Parmodharmah Samajik Nidhi Limited ("Company") for violation of section 197 of Companies Act, 2013 ("Act")

During the course of inquiry, it was observed from the records of the Company that for the financial year ended as on March 31, 2019 and March 3, 2020 the Company had paid director's remuneration exceeding the limit prescribed under section 197 of the Act, i.e., exceeding eleven percent of the net profit for the financial year. It was further observed that no Form MGT-14 had been filed by the Company, which implies the Company had not passed special resolution in this regard.

A show cause notice was issued to the Company and its directors by the Registrar of Companies, Bihar **("ROC")**. The directors admitted the default and stated in its reply that the error was inadvertently made without having any malafide intentions. Consequently, ROC levied an aggregate penalty of INR 16,00,000/- on the Company and its officers in default for violation of provisions of section 197 of the Act for both the aforesaid financial years.

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In the matter of Kudos Finance and Investments Private Limited ("Company") for violation of section 138 and 188 of Companies Act, 2013 ("Act")

(a) During the course of inquiry, it was observed by the IO that the turnover of Company exceeds INR 1,000 Crore, hence in compliance of Section 138, the Company shall appoint internal auditor. In this regard an adjudication notice dated June 23, 2023 was issued by the Registrar of Companies, Pune **("ROC")** to the Company and its officers in default. A reply to the adjudication notice was received from the Company and its officers contending that the turnover of Company is lower than the prescribed threshold limit and denying the non-compliance of the provisions of section 138. The ROC was not satisfied with the reply received from the company and consequently levied an aggregate penalty of INR 4,50,000/- on the Company and its officers in default for violation of provisions of section 138 of the Act.

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(b) During the course of inquiry, it was noted that as per the form AOC-2 annexed to the Director's report for financial year 2020-21, a transaction was executed between the Company and its CEO. However, the date of board meeting approving such transaction was not mentioned in form AOC-2. Hence, the company had violated the provision of Section 188. In this regard an adjudication notice dated June 23, 2023 was issued by the Registrar of Companies, Pune **("ROC")** to the Company and its officers in default. A reply to the adjudication notice was received from the Company and its officers, wherein it was admitted by the Company and its officers that they were not aware of the provisions of Section 188 and thus the transaction was not placed before the board for their approval. Consequently, ROC levied an aggregate penalty of INR 20,00,000/- on the officers of the Company in default for violation of provisions of section 188 of the Act.

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JUDGEMENTS

In the matter of Pioneer Pollution Control & Air Systems Private Limited ("Company") for violation of section 173(3) of Companies Act, 2013 ("Act")

During the course of inquiry, it was observed that the Company had violated the provisions of Section 173(3) by not sending notices of board meetings in writing to every director at their addresses. A notice of enquiry was issued by the Registrar of Companies, Madhya Pradesh **("ROC")** to the Company and its officers in default. The director along with its counsel attended the hearing. During the hearing the Company was unable to present the proof of service of notice to its directors as provided in Section 173(3) of the Act. Consequently, ROC levied an aggregate penalty of INR 100,000/- on the officers in default of the Company for violation of section 173(3) of the Act.

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In the matter of Pre-Stressed Udyog (India) Pvt Ltd ("Company") for violation of section 137 of Companies Act, 2013 ("Act")

During the course of inquiry, it was observed that certain pages and schedules of the financial statements attached in e-form AOC-4 filed by the Company for financial year ended March 31, 2016 are not legible. It could be concluded that financial statements have not been properly filed and no complete information with respect to the financials were given for public view. Therefore, there is violation of Section137 of the Act.

After giving a reasonable opportunity of being heard the Registrar of Companies, West Bengal **("ROC")** levied a penalty of INR 2,00,000/- on the Company, INR 50,000/- each on its officers in default (including the director at the time of default and the present directors) for violation of provisions of section 137 of the Act.

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In the matter of Gagan Narang Sports Promotion Foundation ("Company") for violation of section 118 of Companies Act, 2013 ("Act")

During the course of inquiry, it was observed by the IO that pages of minutes of Board and General meetings of the Company were not consecutively numbered. Thus, the Company and directors had violated the provision of Section 118(1) and are liable under Section 118(11) of the its officers in default.

In this regard an adjudication notice dated July 4, 2023 was issued by the Registrar of Companies, Pune **("ROC")** to the Company and its officers in default. A reply to the adjudication notice was received from the Company and its officers, stating that "It had happened inadvertently and the Company will take care of it in future". Consequently, ROC levied an aggregate penalty of INR 40,000/- on the Company and officers in default of the Company for the aforesaid violation under the Act.

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Guidelines for returning of draft offer document and its resubmission

On 6 February 2024, the Securities and Exchange Board of India **("SEBI")** issued guidelines for returning of draft offer document and its resubmission. Adequate disclosures by the issuer and timely processing of offer documents are important for the vibrancy of the primary market. It is imperative that the offer documents as filed by the issuers and lead manager(s) are compliant with Schedule VI of Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018 **("ICDR Regulations")**, which specifies information for disclosure in the draft offer document or the draft letter of offer and the offer document or the letter of offer, as applicable.

SEBI has observed that at times, draft offer documents/ draft letter of offer filed with the Board for public issue/ rights issue of securities (hereinafter "draft offer document") are found lacking in compliance with respect to instructions provided under Schedule VI of ICDR Regulations. Such documents require revisions/ changes and thus lead to a longer processing time. In order to ensure completeness of the offer document for investors and provide greater clarity & consistency in the disclosures and for timely processing, SEBI has decided to issue 'Guidelines for returning of draft offer document and its resubmission'. Accordingly, the draft offer document shall be scrutinized based on the broad guidelines and such documents which are not compliant with the instructions provided under Schedule VI of ICDR Regulations and guidelines provided hereunder, shall be returned to the issuer. Broad guidelines for returning of draft offer document and its resubmission are placed at Annexure A of the circular. In order to enhance ease of doing business for issuers, where draft offer document is returned in terms of these guidelines, there shall be no requirement for payment of any fees on account of resubmission of draft offer document. This Circular shall come into force with immediate effect.

Revised Pricing Methodology for Institutional Placements of Privately Placed Infrastructure Investment Trust (InvIT)

On 8 February 2024, SEBI issued the revised pricing methodology for Institutional Placements of Privately Placed Infrastructure Investment Trust (InvIT). Regulation 14(4) of the SEBI (Infrastructure Investment Trusts) Regulations, 2014 ("InvIT Regulations") provides that any subsequent issue of units after initial public offer may be by way of institutional placement, in addition to other mechanisms provided in the regulations. Paragraph 7.9 of the SEBI Master Circular for InvITs dated 6 July 2023, provides the pricing guidelines for institutional placement of InvIT, which state that the institutional placement by InvIT shall be made at a price not less than the average of the weekly high and low of the closing prices of the units of the same class quoted on the stock exchange during the two weeks preceding the relevant date. Based on the request of the industry in respect of pricing for institutional placement by privately placed InvIT, recommendation of Hybrid Securities Advisory Committee (HySAC), and to promote Ease of Doing Business, the guidelines for pricing of institutional placements InvITs has been reviewed. Based on the said review, SEBI decided that floor price for institutional placement for privately placed InvITs shall be NAV per unit of such InvIT. Accordingly, the pricing for listed InvITs stand modified as under so that privately placed InvITs can undertake institutional placement based on NAV of the assets of the InvIT:

Paragraph 7.9.1 of the SEBI Master Circular for InvITs dated July 06, 2023 is modified as given below:

3.1 "The institutional placement by public InvIT shall be made at a price not less than the average of the weekly high and low of the closing prices of the units of the same class quoted on the stock exchange during the two weeks preceding the relevant date. Provided that the public InvIT may offer a discount of not more than five percent on the price so calculated, subject to approval of unitholders through a resolution as specified in para 7.2.1.
Explanation: "relevant date" for the purpose of clauses related to institutional placement shall be the date of the meeting in which the board of directors of the investment manager decides to open the issue."

3.2. Insertion of Paragraph 7.9.2 to the SEBI Master Circular for InvITs dated July 06, 2023:

"The institutional placement by privately placed InvIT shall be made at a price not less than the NAV per unit, based on the full valuation of all existing InvIT assets conducted in terms of InvIT Regulations."

This circular shall be applicable with immediate effect.

Cabinet approves amendment in the Foreign Direct Investment (FDI) policy on Space Sector

On 21 February 2024, the Cabinet approved the amendment in Foreign Direct Investment (FDI) policy on space sector. Now, the satellites sub-sector has been divided into three different activities with defined limits for foreign investment in each such sector. The Indian Space Policy 2023 was notified as an overarching, composite and dynamic framework to implement the vision for unlocking India's potential in Space sector through enhanced private participation. The said policy aims to augment space capabilities; develop a flourishing commercial presence in space; use space as a driver of technology development and derived benefits in allied areas; pursue international relations and create an ecosystem for effective implementation of space applications among all stakeholders. As per the existing FDI policy, FDI is permitted in establishment and operation of Satellites through the Government approval route only. In line with the vision and strategy under the Indian Space Policy 2023, the Union Cabinet has eased the FDI policy on Space sector by prescribing liberalized FDI thresholds for various sub-sectors/activities.

Department of Space consulted with internal stakeholders like IN-SPACe, ISRO and NSIL as well as several industrial stakeholders. NGEs have developed capabilities and expertise in the areas of satellites and launch vehicles. With increased investment, they would be able to achieve sophistication of products, global scale of operations and enhanced share of global space economy.

The proposed reforms seek to liberalize the FDI policy provisions in space sector by prescribing liberalized entry route and providing clarity for FDI in Satellites, Launch Vehicles and associated systems or subsystems, Creation of Spaceports for launching and receiving Spacecraft and manufacturing of space related components and systems.

Benefits:

Under the amended FDI policy, 100% FDI is allowed in space sector. The liberalized entry routes under the amended policy are aimed to attract potential investors to invest in Indian companies in space.

The entry route for the various activities under the amended policy are as follows:

- **Upto 74% under Automatic route:** Satellites-Manufacturing & Operation, Satellite Data Products and Ground Segment & User

Segment. Beyond 74% these activities are under government route.

- **Upto 49% under Automatic route:** Launch Vehicles and associated systems or subsystems, Creation of Spaceports for launching and receiving Spacecraft. Beyond 49% these activities are under government route.

- **Upto 100% under Automatic route:** Manufacturing of components and systems/ sub-systems for satellites, ground segment and user segment.

This increased private sector participation would help to generate employment, enable modern technology absorption and make the sector self-reliant. It is expected to integrate Indian companies into global value chains. With this, companies will be able to set up their manufacturing facilities within the country duly encouraging "Make in India (MII)" and "Atmanirbhar Bharat" initiatives of the Government.

Centralization of certifications under Foreign Account Tax Compliance Act (FATCA) and Common Reporting Standard (CRS) at KYC Registration Agencies (KRAs)

On 20 February 2024, SEBI issued a notification on centralization of certifications under Foreign Account Tax Compliance Act (FATCA) and Common Reporting Standard (CRS) at KYC Registration Agencies (KRAs). SEBI circulars dated 26 August 2015 and 10 September 2015, and guidance note on FATCA and CRS norms issued by the Department of Revenue, Ministry of Finance state that the reporting financial institution (RFI) [as defined under rule 114F (7) of Income Tax Rules,1962] shall obtain a self-certification from the client, as part of the account opening documentation, to determine the client's residence for tax purpose. In terms of rule 114G(11)(a) of Income Tax Rules, 1962, the regulators are, inter alia, required to issue necessary instructions and guidelines to provide the procedure and manner of maintaining the information by the reporting financial institution(RFI). Based on feedback received from stakeholders in securities market, and for ease of doing business and compliance reporting, SEBI decided that the intermediaries, who are RFI, shall upload the FATCA and CRS certifications obtained from the clients onto the system of KRAs with effect from 1 July 2024. The existing certifications obtained from clients prior to 1 July 2024 shall be uploaded by the intermediaries onto the systems of KRAs within a period of 90 days of implementation of this circular as mentioned above.

The onus of obtaining and reporting the FATCA and CRS certification and related compliances shall lie with the respective intermediaries. The intermediary shall confirm the reasonableness of such certification based on the information obtained in respect of account opening including any documentation obtained in accordance with Prevention of Money Laundering (Maintenance of Records) Rules, 2005 and shall update the self-certification, as and when, there is a change reported by the client. The KRAs shall develop their systems/mechanism, in co-ordination with each other and shall follow uniform internal guidelines/standards, in consultation with SEBI.

Competition Commission of India (Lesser Penalty) Regulations, 2024

On 20 February 2024, the Competition Commission of India notified the Competition Commission of India (Lesser Penalty) Regulations, 2024. In terms of these regulations, the "applicant" is an enterprise, as defined in clause (h) of section 2 of the Competition Act, 2002, who is or was a member of a cartel and includes an individual who has been involved in the cartel on behalf of an

enterprise; and further includes an enterprise or association of enterprises or a person or association of persons, though not engaged in identical or similar trade if it participates or intends to participate in furtherance of such cartel and submits an application for lesser penalty and/or lesser penalty plus to the Competition Commission of India **("Commission")**.

The conditions for lesser penalty or lesser penalty plus are as follows:

- An applicant, seeking the benefit of lesser penalty or lesser penalty plus under section 46 of the Competition Act, 2002, shall-
    - cease to have further participation in the cartel from the time of its disclosure unless otherwise directed by the Commission;
    - provide vital disclosure in respect of alleged contravention of the provisions of section 3 of the Competition Act, 2002;
    - provide all relevant information, documents and evidence as may be required by the Commission;
    - co-operate genuinely, fully, continuously and expeditiously throughout the investigation and other proceedings before the Commission;
    - not conceal, destroy, manipulate or remove the relevant documents in any manner that may contribute to the establishment of a cartel; and
    - not give any false evidence or omit to submit any material information knowing it to be material.

- The applicant shall provide the names of the individuals who have been involved in the cartel on its behalf and for whom lesser penalty or lesser penalty plus, as the case may be, is sought by the applicant.

- Where an applicant or its authorized representative, at the time of filing of application for lesser penalty or lesser penalty plus, as the case may be, fails to provide full and true disclosure of the information and evidence as referred and described in Schedule I or Schedule II or both or as required by the Commission from time to time, the Commission may reject its application.

- Without prejudice to the above, the Commission may subject the applicant to further restrictions or conditions, as it may deem fit, after considering the facts and circumstances of the case.

- Where an applicant or its authorized representative fails to comply with the conditions mentioned above, either before the Director General or before the Commission after receipt of the investigation report, the Commission may reject its application.

- Before rejecting the lesser penalty or lesser penalty plus application of the applicant under this regulation, the Commission shall provide an opportunity of being heard to such applicant.

- Notwithstanding rejection of application, as mentioned above, the Commission or the Director General shall be free to use the information, documents and evidence submitted by the applicant, in the ongoing matter, in accordance with the provisions of section 46 of the Competition Act, 2002.

- Upon rejection of application, as mentioned above, the applicant may be subjected to inquiry for the contravention.

- The discretion of the Commission, in regard to reduction in monetary penalty under these

- regulations, shall be exercised having due regard to –
    - the stage at which the applicant comes forward with the disclosure;
    - the evidence already in possession of the Commission;
    - the quality of the information provided by the applicant;
    - fulfilment of certain conditions specified above; and
    - the entire facts and circumstances of the case.

The Competition Commission of India (Lesser Penalty) Regulations, 2009, stand repealed from the date on which these regulations come into force that is 20 February 2024.

Amendment to Master Direction on Prepaid Payment Instruments

On 23 February 2024, the Reserve Bank of India ("RBI") issued a notification on amendment to Master Direction on Prepaid Payment Instruments (PPI). This has reference to the Master Directions dated 27 August 2021 on Prepaid Payment Instruments (MD-PPIs) (as amended from time to time), which prescribes, inter alia, the various types of PPIs which banks and non-banks can issue after obtaining necessary approval/ authorisation from RBI. Public transport systems across the country cater to a multitude of commuters on a daily basis. To provide convenience, speed, affordability, and safety of digital modes of payment to commuters for transit services, the RBI has decided to permit authorised bank and non-bank PPI issuers to issue PPIs for making payments across various public transport systems.

The MD-PPIs has been updated by revising paragraph 10.2 thereof. These instructions are issued under Section 18 read with Section 10 (2) of Payment and Settlement Systems Act, 2007. These instructions shall come into effect immediately.

Appointment/re-appointment of Director, Managing Director or Chief Executive Officer in Asset Reconstruction Companies (ARCs)

On 27 February 2024, the RBI issued a notification regarding appointment/ re-appointment of Director, Managing Director or Chief Executive Officer in Asset Reconstruction Companies. In terms of Section 3(6) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and the guidelines contained in circular dated 11 October 2022 on 'Review of Regulatory Framework for Asset Reconstruction Companies (ARCs)', ARCs are required to obtain prior approval of the RBI for appointment/ re-appointment of any Director, Managing Director or Chief Executive Officer.

In order to have uniformity in the information submitted by ARCs for obtaining such approvals, a form for furnishing the requisite information about the candidate and an indicative list of documents required to be submitted along with the application are required in the format enclosed with the notification. ARCs are advised to submit applications, complete in all respect, along with duly signed enclosures to the Department of Regulation, Central Office, Central Office Building, 12/13th floor, Shahid Bhagat Singh Marg, Fort, Mumbai-400001 at least ninety days before the vacancy arises / the proposed date of appointment or re-appointment. Reserve Bank may call for additional information/documents for processing the application, if required. These instructions shall come into force with immediate effect.

RECENT EVENTS

Vineet Aneja, Managing Partner at Clasis Law was one of the speakers for an interactive event *"Demystifying Trade Boundaries – The India-US Opportunity"* in Mumbai by the Indo-American Chamber of Commerce, India. In this event, Vineet shared his valuable insights on the topic *"Connecting Businesses, Crossing Borders: The Legal Landscape of India"* through the expansion of business by way of foreign direct investment and overseas investments. He also gave insights into external commercial borrowings and cross-border contracts between the two jurisdictions.

International Women's Day: Celebrating Achievements and Advocating for Change

***International Women's Day (IWD)**, celebrated annually on **March 8th**, is a global day recognizing the social, economic, cultural, and political achievements of women. It also marks a call to action for accelerating gender parity. The day is observed in many countries around the world with a variety of events, celebrations, and campaigns. The diverse approaches to celebrate International Women's Day showcase the global nature of feminism and the unique cultural contexts in which it operates. Let's read about a few interesting facts about International Women's Day.*

The highest attendance ever recorded for a standalone women's sporting event was achieved during the ICC Women's T20 World Cup final held in Australia on March 8th, 2020.

Since 1996, a specific theme has been designated for IWD & raising awareness about critical issues faced by women globally. The theme for 2024 was "Invest in Women: Accelerate Progress," focusing on addressing economic inequalities.

The #MeToo movement, which gained significant momentum in 2017, is considered a major milestone in raising awareness about sexual harassment and violence against women.

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