The Corporate Brief

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The Corporate Word

NBFC

Non-banking Financial Corporation provides banking and financial services without having a banking license. It offers a range of traditional services such as loans, leasing, hire-purchase, and investments while being regulated by the RBI. Some of its categories include Mutual Funds, Insurance companies, and Venture Capital firms.

Regulatory Arbitrage

A practice whereby firms capitalize on loopholes in regulatory systems to circumvent unfavourable regulations. For example, companies may set up operations in countries with lower corporate tax rates to reduce their overall tax liability.

SPV

A Special Purpose Vehicle is a company subsidiary used to undertake risky ventures while reducing any negative financial impact upon the parent company. They are also used by venture capitalists to consolidate a pool of capital to invest in a startup.

Stata 15

Stata is a powerful statistical software that enables users to analyze, manage, and produce graphical visualizations of data. It is primarily used by researchers in the fields of economics, biomedicine, and political science to examine data patterns.

Black Swan Event

It is an unpredictable rare occurance that has a severe and widespread effect on the economy. It is often used to describe events that were dificult to foresee. Eg: 9/11, 2008 U.S. Housing Crisis, etc.

QE

Quantitative Easing; Usage of unconventional monetary policy tools used by the central banks to stimulate the economy, especially during periods of economic recessions. It involves central banks purchasing assets like government securities from the open market.

Regression analysis

In statistical modeling, regression analysis is a method used to figure out how one variable (the dependent variable) is related to one or more other variables (the independent variables). It helps us understand and quantify these relationships, allowing us to make predictions and draw insights from data

Windfall Tax

A higher tax levied by the government on specific industries when they experience unexpected and above-average profits.

Jio Financial Services Listing

- Aatreya Jai Nandan

Background

Jio Financial Services Limited ("JFSL"), formerly housed under the banner of Reliance Strategic Investments Ltd, is the Non- Banking Financial Corporation ("NBFC") arm of the Reliance Group. It got listed on Indian markets on 21st August 2023, post its demerger with Reliance Industries Limited ("RIL"). The demerger makes it the 3rd largest NBFC in the country, with a market capitalization of 1.52 trillion INR or close to 18.37 billion USD (as of 31st Aug- 240 INR apiece).

JFSL is a financial services company with investments in six companies: Reliance Payment Solutions, Reliance Industrial Investments and Holdings ("RIIHL"), Reliance Retail Finance, Jio Information Aggregator Services, Jio Payments Bank, and Reliance Retail Insurance Broking Ltd. The company's objective is to lend to merchants and consumers and to engage in other financial services such as asset management, digital brokering, payments, and insurance.

The allotted shares of JFSL (abbreviated "JIOFIN" on the markets) are in the ratio of 1:1 with respect to each share of RIL held. This means that the business agreed to give each shareholder one share of Jio Financial Services for every one share they held of Reliance Industries. This allotment to the demat account only applies to those eligible shareholders of RIL whose names had appeared on the register of shareholders on the record date. For that, the shareholders should have purchased the shares a minimum of one day prior to the record date of the demerger.

Interestingly, the only way to have received JFSL shares, prior to the official listing was to have bought RIL shares before the record date, as JFSL shares were not trading. The jump in share price indicated that a significant number of investors wanted JFSL shares upfront.

According to available data, approximately 6.1% of RIL's net worth is to be transferred to JFS, and based on its net worth, the ideal value should have been only INR 133. Additionally, predictions suggest that JIOFIN would cost between INR 160 and 190. However, the market set a price of INR 261.85 per share on July 20th as per its price discovery, indicating a significant premium.

Rationale for the demerger

The reasons for the demerger can broadly be categorised into 2 parts:

1.Regulatory convenience: regulations pertaining to asset management and NBFCs are strict since the life savings of many Indians are tied up in such corporations. Therefore, to manage compliance regulations, the demerger was the most viable solution.

2. Corporate Administration: the demerger would allow the management of the company to focus on the expansion of the new business in a clear-cut manner. Furthermore, keeping the business separate from other businesses would attract strategic partners and other investors.

Reaction from the Markets

The reaction from the markets were expected to have been largely positive. The reasons for investor optimism are many- they may be attributed to investors expecting a disruption in the financial services sector the same way Reliance had disrupted the telecom sector.

Further, the joint venture formed by JFSL and Blackrock provides a sense of trust and substantial funding. It additionally will act like a mentorship program for JFSL given the fact that Blackrock is a global market leader in certain areas that JFSL seeks to enter, such as the AMC field. Each party to the joint venture will provide 300 million USD each.

After hitting the lower circuit (5%) for 3 consecutive trading days after its listing the stock seems to be on the mend. The major reason for the downward trajectory of the stock has been attributed to announcement to remove JFSL from the NSE and BSE indexes. However, due to certain block deals the stock has managed to partly recover from its early losses.

Therefore, is no doubt that the JIOFIN listing has made waves with its demerger and subsequent listing. What remains to be seen is the impact on the financial industry and the financial landscape, something only time can tell.

Read more at:

https://indianexpress.com/article/explained/explained-economics/ril-demerger-financial-arm-shareholders-8849814/

https://www.reuters.com/business/finance/reliances-jio-financial-services-be-listed-aug-21-2023-08-18/

https://timesofindia.indiatimes.com/business/india-business/jio-financial-services-listing-jio-financial-services-share-price-reliance-jio-shares/articleshow/102885629.cms?from=mdr

https://www.valueresearchonline.com/stories/52888/jio-finance-is-set-to-demerge-from-the-reliance-industries/

Unveiling the Future of Antitrust Enforcement: CCI's Draft Regulations on Settlements and Commitments

- Gungun Anand and Aviral Singhai

Introduction

In a significant move that promises to reshape the landscape of antitrust enforcement in India, the Competition Commission of India ("CCI") recently unveiled draft regulations pertaining to settlements and commitments ("S&C") for public feedback. This move follows the earlier passage of the Competition (Amendment) Act, 2023 which brought about substantial changes to the existing Competition Act, 2002. These regulations, while not yet enforced, mark a pivotal step towards fostering transparency and effectiveness in operationalising the S&C framework, allowing the CCI to track unpaid dues and dispose of cases efficiently.

Understanding Commitments and Settlements

The S&C regulations have emerged as indispensable tools in modern antitrust enforcement regimes worldwide. They offer an alternative to conventional enforcement actions, enabling parties to propose structural or behavioural S&C in cases involving vertical restraints and abuse of dominance (excluding cartels). The amendment to the Act inserted Sections 48A and 48B for Settlement and Commitment respectively.

Commitments involve proposals made by parties under investigation to remedy perceived competition concerns with a specific set of rules known as 'behavioural remedies'. On the other hand, Settlements entail parties admitting to antitrust violations with evidence after an unappealable CCI Investigation, thus giving the CCI ultimate authority in such cases.

The Impetus Behind the Draft Regulations

The draft regulations on S&C come at a time when competition enforcement authorities globally are exploring innovative ways to strike a balance between enforcing competition laws and maintaining the agility needed for modern business dynamics.

Highlights of the Draft Regulations

The CCI has put down clear parameters of assessment, and penalties for better understanding and transparency in anti-competitive cases. It outlines key components, including statutory fees based on turnover, criteria for evaluation, settlement amount calculations based on pending penalty guidelines, and considerations related to the evidentiary value of materials submitted.

Notable modifications include defined timelines and procedures for S&C applications. For instance, Commitment applications must be filed within 45 days of the Investigation Order or before receiving the Director General's Report (DG Report), with a possible 30-day extension.

The filing procedure laid down in the Draft Regulations is as such-

1. As long as the inquiry is ongoing, it may be submitted by a party who is the subject of an investigation into
 (i) misuse of a dominant position and/or
 (ii) an anticompetitive vertical arrangement.

2. It must be submitted within 45 days after receiving the CCI's investigative order. In case of delays, extensions of up to 30 days may be given. After receiving the commitment application, the full commitment procedure—including any extensions—should be finished within 90 days. The CCI's investigation into the applicant is suspended at this time.

Accordingly, the CCI must form a prima facie opinion within seven days of receiving the commitment application, and stakeholders can provide comments within 21 days. A final order is issued within 90 days, with possible extensions at the CCI's discretion.

Similarly, Settlement applications must be submitted within 45 days of receiving the DG Report, with a possible 30-day extension. The CCI must form a prima facie opinion within seven days, and stakeholders can comment within 21 days. Further, the settlement amount computed by CCI will be final and any application seeking revision of the same will not be entertained by the Commission, said the draft settlement scheme. The filing procedure for the same is as such-

1.It can be filed by a party against whom the Director General (DG) (i.e., investigative wing of the CCI) has found a violation of
(i) an abuse of dominant position and / or
(ii) anticompetitive vertical agreement.

2. It must be filed within 45 days of receiving the DG Report, with potential 30-day extensions. The entirety of settlement proceedings, including extensions, is anticipated to conclude within 120 days of receiving the settlement application.

Accepting settlements does not constitute an admission of contravention, much like making obligations. The modifications permit damage-related follow-up actions based on settlement orders. Additionally, the CCI may keep gathering information on non-participating parties and use it against them. The CCI's investigation into the other violations continues even if a settlement application only addresses some of them. Settlement application orders cannot be appealed.

Finally, the CCI's order will be withdrawn and revoked if the applicant disobeys it, makes false or deficient disclosures, or if there is a significant change in the circumstances. The applicant might be forced to pay up to INR 10 million in legal fees, and the investigation into any abuse of dominance or anti-competitive agreements could be started or restarted.

The regulations cover both ongoing investigations and cases where parties approach the CCI with voluntary proposals to address competition concerns. This inclusivity demonstrates the CCI's commitment to ensuring a broad application of these mechanisms.

Implications for Stakeholders

Concerned stakeholders have until September 13, 2023 to comment on the proposed regulations through the CCI's official website. Further, inviting public comments on the Draft Regulations by the CCI is a laudatory move as it will foster transparency, promote inclusivity, and effective policymaking.

Given the concise timeframe for the submission of comments, these regulations underscore the Central Government's prioritisation of expediting market corrections and reducing prolonged litigation. Consequently, the most immediate beneficiaries of these provisions are likely to be significant technology giants, often referred to as BigTech companies. These corporations which could previously propose commitments in foreign jurisdictions to address competition law concerns related to their conduct, have faced challenges in applying this approach within India, making the draft regulations especially pertinent to their operations in the country.

Conclusion

The CCI's draft regulations on S&C marks a transformative step towards streamlining antitrust enforcement and aligning it with the evolving needs of the Indian business landscape. As per the regulator, "the intent of creating a procedure for commitment is driven by the need to ensure quicker market correction." Therefore, by offering businesses a more flexible and efficient mechanism to address unfair business practices and promote competition in the marketplace, the CCI aims to strike a balance between robust enforcement and collaboration. As these regulations move towards implementation, stakeholders must closely monitor how this shift shapes the future of competition law in India.

Read more at:

https://www.cci.gov.in/images/whatsnew/en/background-note-settlement1692847181.pdf

https://www.mondaq.com/india/antitrust-eu-competition-/1360664/competition-commission-of-india-publishes-draft-regulations-on-commitments-and-settlements
https://www.india-briefing.com/news/competition-law-cci-india-introduces-draft-regulations-for-commitment-and-settlement-proceedings-

29421.html/#:~:text=The%20CCI%20introduced%20draft%20regulations,to%20settle%20with%20the%20CCI.
https://www.livemint.com/economy/cci-seeks-public-comments-on-settlement-commitment-schemes-11692887701825.html

Risk of 'Real Lehman Moment' in China's Banking Crisis

-Divyansh Morolia

Background

China's rapid economic growth over the past few decades has been nothing short of remarkable. However, beneath the surface of this impressive growth lies a growing concern, the stability of China's banking system. With an ever-expanding shadow banking sector, rising debt levels, and potential vulnerabilities in the financial sector, there is a looming risk of a 'Real Lehman Moment' in China's banking crisis, with potentially far-reaching consequences not only for China but also for the global economy.
The Lehman Brothers Collapse.

The term 'Lehman Moment' refers to the collapse of Lehman Brothers in 2008, which marked the onset of the global financial crisis. Lehman's bankruptcy had a cascading effect, leading to panic in the financial markets, a freezing of credit markets, and a severe economic downturn. It serves as a stark reminder of the interconnectedness and fragility of the global financial system.

China's Banking Crisis: The Underlying Risk

1. Rising Debt Levels: China's debt levels have skyrocketed in recent years. Corporate debt, local government debt, and household debt have all reached alarming levels. The rapid accumulation of debt has raised concerns about China's ability to service its obligations, particularly if economic growth were to slow down.

2. Shadow Banking: China's shadow banking sector, which includes off-balance-sheet lending (i.e., an accounting practice where companies prevent assets and liabilities from being transparently reported on balance sheets) and non-traditional financial activities, has grown substantially. This sector is less regulated and poses a risk to the stability of the financial system. The opacity and complexity of these shadow banking activities make it difficult to assess their true scale and potential impact on the economy.

3. Real Estate Bubble: China's real estate market has experienced explosive growth, leading to concerns about a housing bubble. A collapse in property prices could have far-reaching consequences, as the real estate sector is a significant driver of economic activity in China.

4. State-Owned Enterprises (SOEs): Many of China's largest banks have substantial exposure to state-owned enterprises, some of which are burdened with excessive debt and inefficiencies. A wave of SOE defaults could strain the banking system.

5. Contagion Risk: China's banking sector is interconnected with global financial markets. Any significant disruption in China's banking system could have spillover effects, similar to the Lehman Brothers collapse, leading to a global financial crisis.

The Potential for a 'Real Lehman Moment'

While comparisons to Lehman Brothers may be imprecise, the potential for a significant financial crisis in China is real. The Chinese government has taken steps to address some of these risks, such as deleveraging and increasing regulatory oversight. However, the challenge lies in implementing these reforms without causing a severe economic downturn.

Possible Scenarios

1. Government Intervention: If the Chinese government continues to intervene to prevent defaults and prop up struggling banks and state-owned enterprises, it could exacerbate moral hazard and delay necessary reforms, increasing the risk of a more severe crisis down the road.

2. Uncontrolled Defaults: On the other hand, if the government allows widespread defaults to occur, it could trigger financial panic and contagion, with consequences felt not only in China but also globally.

3. Managed Reforms: A more optimistic scenario involves carefully managed reforms that address the most pressing issues in the banking system, such as reducing debt levels, increasing transparency, and strengthening regulatory oversight. This approach would aim to stabilize the system while avoiding a catastrophic collapse.

Conclusion

The risk of a 'Real Lehman Moment' in China's banking crisis is a matter of global concern. China's rapid economic growth has been a major driver of the global economy, and any significant disruption in its financial system could have profound consequences worldwide. It is essential for China to navigate its banking crisis with caution, implementing reforms that address the underlying risks while avoiding a catastrophic collapse. Moreover, international cooperation and vigilance are necessary to monitor and mitigate the potential spillover effects of a Chinese banking crisis on the global financial system. The lessons learned from the Lehman Brothers collapse should serve as a stark reminder of the importance of proactive risk management in the financial sector.

Read More at:

https://www.tandfonline.com/doi/full/10.1080/17521440.2022.2150524

https://m.timesofindia.com/business/india-business/risk-of-real-lehman-moment-in-chinas-banking-crisis-heres-what-jefferies-chris-wood-has-to-say/articleshow/102854098.cms

https://m.economictimes.com/news/international/business/the-risk-of-a-lehman-moment-in-china-rising-says-jefferies-chris-

wood/articleshow/102846706.cms#:~:text=The%20risk%20of%20a%20'real,Wood%20said%20in%20a%20newsletter.
https://www.barrons.com/articles/china-debt-financial-crisis-economy-1ab58020

Credits to Currencies: NVIDIA's Sales Soar to New Heights

-Akhila Hebbar

Introduction

Recognized globally as a leader in artificial intelligence ("AI") and graphics processing units ("GPUs"), Nvidia Corporation ("NVIDIA") has consistently pushed the boundaries of possibilities in the world of computing. In a testament to their relentless innovation, NVIDIA has recently achieved a remarkable milestone by exceeding their sales by more than double. Initially known for its graphics cards for gaming enthusiasts, the company pivoted towards AI and high-performance computing ("HPC") in the mid-2000s. This strategic shift proved to be visionary, as AI and HPC technologies surged in importance.

One of the driving forces behind NVIDIA's success is the rapid integration of AI into various industries. From healthcare and autonomous vehicles to finance and entertainment, AI has become a transformative technology. NVIDIA's GPUs are at the heart of many AI systems, offering the high computational power required for machine learning and deep learning tasks.

Further, the gaming industry remains a lucrative market, and NVIDIA's cutting-edge GPUs continue to be a favourite among gamers. Additionally, their GPUs are employed in cryptocurrency mining, further diversifying their revenue streams.

The Broader Implications

NVIDIA's exceptional sales growth carries broader implications for the tech industry and AI ecosystem. With NVIDIA's GPUs at the forefront, we can anticipate more rapid advancements in AI technology. This includes breakthroughs in natural language processing, computer vision, and reinforcement learning, enabling AI systems to perform increasingly complex tasks.

However, this rapid growth has several legal implications, both for the company itself and the broader technology industry

As the company becomes more dominant in the AI and GPU markets, concerns about anti-competitive behaviour may arise. Contrarily, NVIDIA continues to innovate, and the cost of AI hardware is likely to decrease. This affordability will democratize AI, allowing smaller companies and researchers to harness the power of AI for various applications, fostering innovation across industries. Further, the use of AI often involves processing sensitive data and consequently, compliance with data privacy regulations becomes very critical.

Conclusion

In conclusion, NVIDIA's soaring surge in sales carries substantial legal implications. As the company continues to redefine the frontiers of AI and HPCs, it faces heightened antitrust scrutiny, potential intellectual property disputes, and the critical imperative of data privacy and security compliance. Successfully navigating these challenges, while maintaining growth and integrity, requires meticulous legal compliance, expert counsel, and unwavering dedication to upholding applicable laws and regulations. NVIDIA's remarkable success is not just technological; it is deeply intertwined with its ability to navigate these complex legal waters.

Read More at:

https://www.bbc.com/news/business-66601716
https://www.wired.co.uk/article/nvidia-ai-chips
https://www.electronicspecifier.com/products/artificial-intelligence/nvidia-sees-sales-more-than-double-following-demand-for-ai-chips

A Critical Analysis of SEBI's Index Provider Regulation

-Amar Prem Prakash

In 2019, the Securities and Exchange Board of India ("SEBI") introduced the Index Provider Regulations. The function of SEBI, according to Section 11(1) of the Securities and Exchange Board of India Act, 1992 is to protect the interests of investors in securities and to promote the development of, and to regulate the securities market, by such measures as it thinks fit.

In securities, indices are a measurement of the price performance of a group of shares from an exchange. In light of this, index providers are those institutions that formulate and manage these indices. One of the important roles of an index provider is to classify and define markets, as their indices represent a market or a proportion of a market in order to provide a benchmark of performance for that market or sector. They have the responsibility to set the rules that decide what securities to include in each index, how the index will be managed and how securities will be added or removed from that index over time.

Assets under management (AUM) is defined as the market value of investments managed by an entity on behalf of investors. There are two types of funds or schemes. A passive fund is targeted by tracking the returns of the benchmark index and replicating them to invest in a specific index. On the other hand, in an active fund, the entity managing the fund is entirely involved in the investment process. Passive schemes offered by domestic mutual funds increased from 2 trillion rupees in 2020, to 7 trillion rupees in 2023.

Due to this, indices, such as Nifty50 and index providers that are mostly subsidiaries of stock exchanges in India have more power and influence to affect the capital markets and inflows into the country. This exponential change was the main reason for the SEBI to introduce a Consultation Paper in 2023 outlining a prospective framework to oversee index providers operating within India after its initial discussion paper in 2017.

The main worry was that index providers would be given excessive power and this would lead to an abuse of their discretion which would further cause stocks to be included or excluded from indices at their will.

This, in turn, would change the weights of their constituents that would impact the investors' returns coming from index-linked funds that are basically portfolios of stocks designed to replicate the composition and performance of a financial market index. To address this issue, SEBI decided to borrow from international regulators. The EU Benchmark Regulation, which was published in 2016 regulated the operation of index providers. The UK, Australia, Singapore, Japan, and Korea introduced legislations motivated by the EU Benchmark Regulation to control the regulatory procedure. SEBI also adopted the International Organization of Securities Commissions (IOSCO) standards to India to control these providers.

In the current scenario, the regulation includes that index providers must be corporations with a minimum net worth of Rs. 25 crore. It prohibits anyone or any group of people from signing up to be an index provider with index administration experience of less than five years. Moreover, the index providers must uphold the impartiality and integrity of the index determination process in accordance with the proposed regulations. This is because it is essential to protect the information, procedures, and commercial interests that are used to determine the index.

These regulations are aimed towards ensuring accountability and transparency, addressing conflicts of interest and ensuring the quality of indices. In financial markets, index providers play a vital role, and greater openness encourages investor confidence. Investor interests are also protected by requiring disclosure of any conflicts and guaranteeing their minimization. Additionally, by ensuring that benchmark indices fairly represent market circumstances, it serves as a basis for sound investment decisions.

Critics argue that implementing these regulations would place an additional burden on index providers, that would raise the cost of compliance which would, in turn, deter a smaller index provider from entering the market. Moreover, this stricter regulation could stifle innovation in the index creation space. If the compliance requirements are too onerous, it might limit the ability of index providers to create new, innovative indices that cater to evolving market needs as well.

On the other hand, in addition to the regulations mentioned above, it is also pertinent to ensure requirements such as the due diligence of data sources, periodic audits, and disclosure to investors.

The department responsible for developing the index should ideally be free from any business or personal interests that might compromise the index's neutrality. Complaints must be handled adeptly, hiring of internal and external auditors must be transparent, and assistance in aiding the regulatory and supervisory organisations should be proper in addition to making audit trails public.

By exposing one area of the investment advisory industry to different standards, imposing a different set of regulations on index providers would result in regulatory fragmentation. The idea of consistent regulation is violated by this. According to the proposed regulations, the benchmarking process must undergo an external audit every two years. All audit data must be kept and made available to SEBI upon request. These two elements make sure that the index providers are highly governed and held accountable.

According to SEBI, when constructing an index, index providers must take into account all pertinent data. The index provider must make sure that the data submitters only use data from authorised and reliable sources. It guarantees the dependability and quality of the input materials used to create the index. Utilising the current standard would promote regulatory harmony and consistency throughout the financial sector. The need of the hour is for SEBI to take an approach that balances the interests of the investors along with scope for the facilitation for financial innovation and growth.

The decisions made by index providers are vital since they can not only affect specific investments but also the entire market's equanimity. The IOSCO Principles for Financial Benchmarks and EU Benchmark Regulation are useful as trend-setters for a well-balanced approach to focus on the methodology of index construction, quality and due-diligence.

Read more:

https://www.business-standard.com/markets/news/market-regulator-sebi-puts-on-hold-regulations-on-index-providers-123072500757_1.html

https://www.thehindubusinessline.com/opinion/index-providers-need-to-be-regulated/article66334895.ece

https://www.sebi.gov.in/reports-and-statistics/reports/dec-2022/consultation-paper-on-regulatory-framework-for-index-provider_66703.html

https://www.telegraphindia.com/business/sebi-joins-other-regulators-to-tighten-rules-on-index-providers/cid/1926360

PayPal- A Reporting Entity under PMLA? An Analysis of Payments Private Limited v. Financial Intelligence Unit of India

-Tejbeer Singh

Background

The petitioner, i.e., Paypal, met with Financial Intelligence Unit – India's ("FIU-IND") Additional Director on October 8, 2017 to discuss their Indian business operations. They expressed a willingness to cooperate with FIU-IND during this meeting. On March 16, 2018, FIU-IND directed PayPal to register as a 'reporting entity' under the Prevention of Money Laundering Act, 2002 ("PMLA" or "the Act"), arguing that PayPal's business model fits this definition. Under the PMLA, there are various consequences of being registered as a 'reporting entity'- such an entity is required to furnish reports including Cash Transaction reports, Suspicious Transaction Reports, Counterfeit Currency Reports, etc. along with a host of other obligations. Essentially, it tightens control over the said entities and burdens them with responsibilities. Despite offering detailed explanations, FIU-IND insisted on the registration.

FIU-IND granted PayPal a personal hearing opportunity and on June 10, 2020, FIU-IND reiterated PayPal's perceived obligation to register as a reporting entity, mentioning RBI guidelines for payment aggregators and gateways. Despite the submissions of PayPal, FIU held it to be a 'reporting entity' under the PMLA and consequently imposed monetary penalties for it having failed to comply with the reporting obligations as placed under the Act.

Arguments from side of petitioner

The petitioner, formerly engaged as both a Payment Aggregator ("PA") and an Online Payment Gateway Service Provider ("OPGSP"), ceased its PA business on April 1, 2021. PayPal strongly asserts that as an OPGSP, it doesn't enrol overseas remitters but exclusively onboards Indian exporters, providing them with a convenient interface for receiving funds from foreign buyers. PayPal contends that it does not handle the funds transferred between Indian exporters and foreign buyers, as these transactions are managed and processed by Authorized Dealer ("AD") Banks. According to PayPal, since it merely facilitates the transfer of funds between Indian exporters and foreign buyers, it does not meet the definition of a reporting entity as per the PMLA.

PayPal emphasized that to be covered under the PMLA, a payment system must involve clearing, payment, or settlement services, in accordance to s.2(1)(rb) of the PMLA. Thus, PayPal contended that it cannot be recognized as a payment system operator under the PMLA, given its specific role as an OPGSP; the statute's strict interpretation should prevail.

The petitioner argued that due to the similar definition of 'payment system' in both statutes, it is unreasonable for the respondents to claim that PayPal, which does not qualify as a payment system under the Payment and Settlement Systems Act 2007 ("PSS Act"), should still be considered a payment system operator under the PMLA. They cited the Lotus Pay Solutions (P) Ltd. v. Union of India case, which affirmed that OPGSPs do not handle funds but focus on providing technological infrastructure for online payment processing, in line with their contracts with AD Banks. The petitioner emphasized that statutes with punitive consequences should be strictly interpreted and not expansively construed. This principle was backed by Glaxo Laboratories (I) Ltd. v. Presiding Officer, which argued against giving a hypothetical interpretation to include PayPal as a payment system operator, despite its clear exclusion.

The Contentions before the Court

The primary argument was that statutory provisions should align with the purpose of the law. The fundamental distinctions between the PSS Act and the PMLA were highlighted, with the former being a financial regulation statute and the latter aimed at addressing specific financial offenses and illicit financial flows. Therefore, the fact that PayPal is not governed by the PSS Act does not necessarily mean it cannot be considered a payment system operator under the PMLA. It was also emphasized that the decision to independently define 'payment system' and 'payment system operator' in the PMLA, instead of merely referencing the PSS Act, signifies legislative intent to provide distinct meanings within each statute.

Moreover, it was stressed that the PMLA serves multiple purposes, incorporating penal, preventive, and regulatory provisions; PayPal's conduct suggests it is deliberately avoiding compliance with Indian laws, hindering the legitimate operations of FIU-India. This is particularly concerning given the cross-border nature and substantial sums involved in transactions processed through PayPal. Accordingly, interpreting the PMLA in light of its purpose is crucial to prevent the proliferation of unmonitored financial channels and to combat money laundering and financial crimes effectively. Finally, the argument rested on the idea that statutes should be construed to suppress mischief and advance legislative objectives, and a narrow interpretation that frustrates the purpose of the law should be avoided.

The Decision

The PSS Act primarily regulates Intermediaries and PAs directly involved in handling funds and facilitating transactions between customers and e-commerce platforms. However, it does not address technology platforms and facilitators, which, while not directly handling funds, play a critical role in fund transfers.

he PMLA, on the other hand, aims to combat money laundering by disentangling the origins of proceeds of crime.

PayPal's interaction with AD Category Banks or other PAs does not change the fact that PayPal operates a payment system concerned with money transfer. Interpreting Section 2(1)(rb) to encompass only entities directly handling funds is not legally justified. To fight money laundering effectively, regulatory authorities need access to transaction data and delayed data submission, as done by the PayPal, would render it obsolete, so reporting obligations are necessary.

Section 2(1)(rb) should be construed to serve the legislative objective of combating money laundering. PayPal's argument that it does not onboard importers or directly handle funds is not decisive in determining whether it falls under Section 2(1)(rb). The PMLA, a special statute targeting money laundering, differs from the PSS Act, which regulates PAs and consumer/merchant interests. However, the conscious introduction of Section 2(1)(rb) and other amendments in the PMLA, recognizing its distinct objectives, suggests that the PSS Act's definition was not meant to be blindly transposed into the PMLA.

The Court supported PayPal's challenge against the penalty. Penalties in such cases are only justified when deliberate violations or misconduct are proven. In this case, PayPal consistently argued that it should not be considered a payment system operator under the PMLA, a stance not entirely baseless. The Court found that FIU-IND imposed the maximum penalty without adequately considering PayPal's concerns. Therefore, the Court deemed it necessary for FIU-IND to provide justified reasons for imposing the maximum penalty as per the statute.

Read More:

Delhi HC: Paypal is a payment system operator and reporting entity under PMLA| SCC Blog (scconline.com)

Decoding The PayPal Verdict - Fin Tech - India (mondaq.com)

PayPal Liable To Be Viewed As 'Payment System Operator', Required To Comply With Reporting Entity Obligations Under PMLA: Delhi High Court (livelaw.in)

Businesses as Consumers – Analysis of National Insurance Co. Ltd. v. Harsolia Motors

- Kunal Dave

The Consumer Protection Act, 1986 ("the Act") was enacted in India to protect the interests of consumers and provide them with a forum to seek redressal for their grievances. In the recent judgement of National Insurance Co. Ltd. v. Harsolia Motors and Ors., the apex Court deliberated upon the definition of the term 'consumer' under Section 2(1)(d) of the Act and determined if a business can be excluded from being considered as a 'consumer' solely on the grounds that it is a commercial enterprise.

Facts of the case

Harsolia Motors, a car dealership, had purchased an insurance policy from National Insurance Co. Ltd. to protect their showroom and inventory of cars. Unfortunately, a fire incident occurred, causing substantial damage to the cars and property in the showroom. Seeking compensation for the losses incurred due to the fire, Harsolia Motors filed an insurance claim with National Insurance Co. Ltd., which was subsequently dismissed by the insurer. Dissatisfied with the denial of their claim, Harsolia Motors took their case to the consumer forum.

The National Consumer Disputes Redressal Commission ("NCDRC") overruled the previous decisions of the State Consumer Disputes Redressal Commission, reinforcing Harsolia Motors' consumer status. Frustrated with these verdicts, National Insurance Co. Ltd. filed a special leave petition under Article 136 of the Constitution of India before the apex Court, leading to the landmark judgment in the case.

Accordingly, the primary issue before the court was whether a commercial enterprise like Harsolia Motors could be considered a 'consumer' under the Consumer Protection Act, 1986 when seeking redressal for goods or services that were not used for commercial purposes.

Analysis

The court's analysis was centred on a meticulous examination of the definition of a 'consumer' in the Act. It emphasized that the key criterion for exclusion from the definition was whether the goods or services had a direct connection to commercial profit generation. In the present case, the court held that Harsolia Motors, despite being a commercial enterprise, was eligible to be considered a 'consumer' under the Act. This was because the insurance policy they had purchased was primarily for safeguarding their property and assets, not for generating profits directly. The goods and services (insurance coverage) had a purpose closely related to asset protection and risk mitigation, rather than being acquired solely for profit-generating activities.

The court also relied on precedents and legislative intent, emphasizing that the Act aimed to protect the rights and interests of individuals and entities using goods and services for personal use or non-commercial purposes, even if those entities were otherwise engaged in commercial activities.

Conclusion

In this landmark ruling the Supreme Court clarified that a commercial enterprise can indeed be considered a 'consumer' under the Act when seeking redressal for goods or services not exclusively intended for commercial purposes. The court's decision underscored the significance of the goods or services having a direct nexus with profit generation to determine whether they fall under the category of 'commercial purpose'.

This landmark ruling carries profound implications for future cases and the broader consumer protection landscape. It reaffirms that businesses, in appropriate circumstances, can avail themselves of the protective framework of consumer laws, emphasizing the importance of the nature and purpose of the goods or services in question.

Read More at:

https://www.livelaw.in/pdf_upload/313-national-insurance-co-ltd-v-harsolia-motors-13-apr-2023-468951.pdf

https://aklegal.in/national-insurance-co-ltd-versus-harsolia-motors-and-others/

https://www.clydeco.com/en/insights/2023/05/is-the-insured-a-consumer

Section 9 of the IBC : an Analysis of M/S KK Ropeways Limited v. M/S Billion Smiles Hospitality Private Limited

- Rishika Jain

A division bench at the National Company Law Appellate Tribunal, comprising of M. Venugopal and Ms. Shreesha Merla has, in the case of M/S KK Ropeways Limited v. M/S Billion Smiles Hospitality Private Limited, held that an arbitral award, when challenged under Section 34 of the Arbitration and Conciliation Act, 1996, cannot be enforced by an appeal under Section 9 of the Insolvency and Bankruptcy Code, 2016.

Facts of the Case

The agreement between M/s KK Ropeways Limited (Appellant) and M/s Billion Smiles Hospitality Private Limited (Respondent) dates to March 9, 2015, where the former rented out a complex to the latter to operate it as a food court. The agreement inserted an obligation on the Respondent to make monthly payments for water, electricity, and common area maintenance, which he failed to do.

The Appellant thus invoked arbitration and was awarded an ex parte arbitral award to recover from the Respondent a sum of INR 26,33,022, along with interest. The Respondent, in challenge to this award, filed an appeal under Section 34 of the Arbitration and Conciliation Act, 1996.

The Appellant, during the pendency of the appeal, tried to execute the award granted to him and issued a demand notice to the Respondent, asking him to pay his operational debt within ten days. Upon his unsuccess, he filed a petition against the Respondent under Section 9 of the Insolvency and Bankruptcy Code, 2016, along with Rule 6 of the Insolvency and Bankruptcy Rules, 2016, initiating the Corporate Insolvency Resolution Process against the Respondent.

The said matter was brought before the National Company Law Tribunal, Bengaluru, which passed an order on April 27, 2021, ruling that the debt in question was already in dispute due to the pending appeal of the respondent. Thus, this Section 9 appeal of the Appellant was dismissed.

The Appellant then filed an appeal before the National Company Law Appellate Tribunal, arguing that the Respondent's debt was not disputed since an arbitral award had already been passed regarding the same. In response to this, the Respondent argued that the debt was indeed in question since it was the basis of the Appellant's claim and was pending adjudication before the Delhi High Court.

The NCLAT was essentially faced with the question of whether, to execute an arbitral award, a petition under Section 9 of the IBC could be maintainable.

Judgement

The NCLAT upheld the NCLT's decision and dismissed the Appellant's appeal, giving four reasons for the same.

One, a dispute in existence involves bringing the matter before a court of law or a tribunal before a receipt of notice under Section 8 of the IBC. Moreover, the dispute continues if there is a challenge to the arbitral award under Section 34 of the Arbitration Act.

Two, the NCLAT observed that arbitration and proceedings under the IBC cannot happen simultaneously. Any adjudicating authority has a right to reject any application filed under IBC, if the dispute at hand is of an imaginary or hypothetical nature, and seems to be fake or only apparent.

Three, it ruled that for the process of a corporate insolvency resolution against a corporate debtor, there should be no real dispute existing between the parties related to the debt.

And four, in terms of the case at hand, the Appellant filed the petition under Section 9 after four months of his attempt to execute the arbitral award. He had been unsuccessful in providing any reason for the delay in his failure to take steps towards the implementation of the award per law and procedures.

The NCLAT thus ruled that an arbitral award, which has been challenged, cannot be enforced under the IBC under the pretext of it being an operational debt.

Read more at

https://indiankanoon.org/doc/7898434/

https://www.lexology.com/library/detail.aspx?g=0921db79-7b88-40da-a682-2b79ca59b463

https://www.scconline.com/blog/post/2023/07/06/nclat-application-s-9-ibc-for-implementation-of-arbitral-award-not-maintainable/