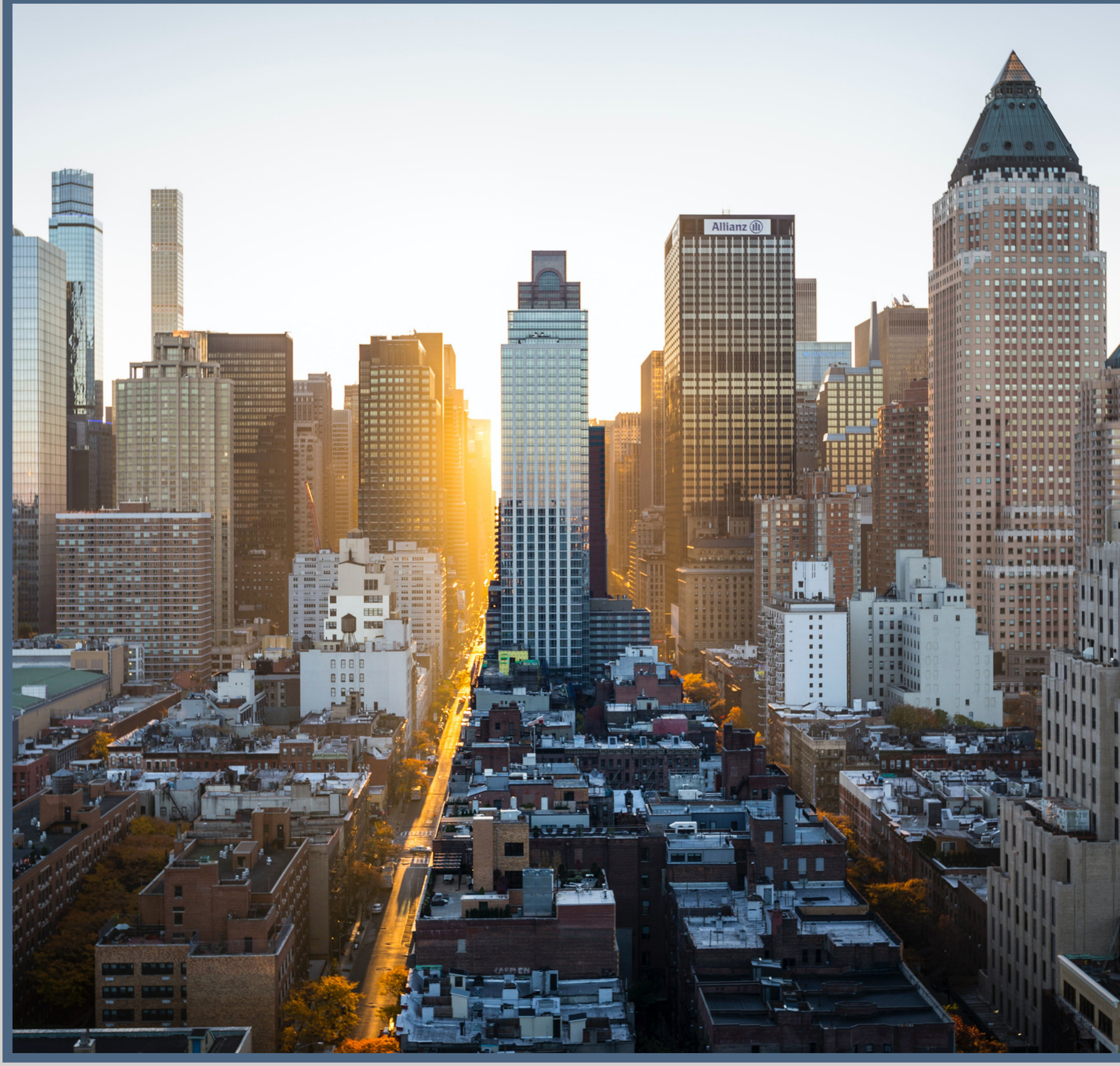
The Corporate Brief

September 2023



Centre for Business & Commercial Laws
NATIONAL LAW INSTITUTE UNIVERSITY, BHOPAL

The Corporate Word

Basket of goods	"A basket of goods" in economics is a representative selection of items, including food, housing, healthcare, and more, used to calculate inflation through the Consumer Price Index (CPI). It helps track changes in overall prices, aiding policymakers in making economic decisions and adjusting wages and benefits to maintain purchasing power.
Finfluencer	It is basically a financial influencer who aims at giving financial advice on various different topics (right now under talks to be regulated due to an authorised and unwarranted advice)
Golden Parachute	A compensation package or agreement for executives that provides substantial financial benefits upon termination, typically in the context of a change in control of the company.
PIPE	Private Investment in Public Equity: A method of raising capital in which a publicly traded company sells shares of its stock to private investors, typically at a discount to the market price.
Marquee Asset	The most imporatant resource or asset owned by a company. These may be tangible or intangible assets contributing to the bottom line and goodwill of the company.
Greenmail	A practice in which a target company repurchases its own shares at a premium from an unfriendly shareholder, often to prevent a hostile takeover
Pay as you earn	**PAYE** is a tax payment method where your taxes are deducted from your salary itself, before you receive your salary.
Hysteresis	A situation which arises when any historical event affects the future economic path. Any disturbance in an economy will lead to a trickle down effect, and the problem will persist for long. This rolling down impact is known as the hysteresis effect.
Derivatives	Derivatives are financial contracts whose value is based on an underlying asset, like stocks, bonds, or commodities. They enable investors to speculate on price movements or hedge against risks, without owning the underlying asset.

India's Unsettling Relations With Canada: Undercurrents Affecting Trade And Commerce

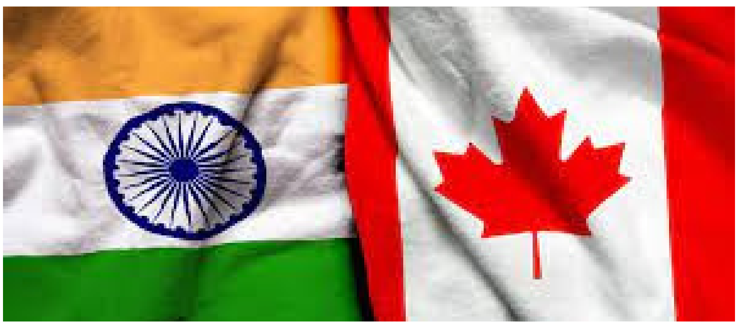
- Divyank Dewan

Background

Prime Minister Justin Trudeau's statement that there were credible allegations linking New Delhi's agents to the murder of Sikh separatist leader Hardeep Singh Nijjar, who was the leader of the Khalistan Tiger Force (KTF) and a designated terrorist in India, aggravated tensions between the two countries and hampered trade talks. India responded to the allegations by stating that, rather than accusing India, Canada should clamp down on anti-India elements operating on its territory. This triggered a full-scale diplomatic conflict between the two nations.

After that, Canada's trade commission announced that it had halted negotiations with India on the proposed treaty, just three months after both countries said they hoped to sign an initial agreement this year. This is not the first time that tensions have arisen between the two countries; Trudeau's support for the farmers' protest in India in 2020 did not sit well with the Indian government. India deemed it an 'unacceptable interference' in its affairs. The then-high commissioner of Canada to India, Nadir Patel, was summoned by the Ministry of Foreign Affairs and delivered a diplomatic note, or demarche. The statement from India also warned that it could have severe negative effects on bilateral relations.

Even before Trudeau's presence at the G20 Leaders' Summit in New Delhi, relations had begun to deteriorate. Before his visit, Canadian government officials made it plain that trade negotiations between the two nations had been suspended due to "certain political developments."



The Trade Deal

The treaty was tied up with Canada's Indo-Pacific strategy and India was described as a "ideal destination" for a Team Canada Trade Mission. Canada had stated, while expressing interest in the Free Trade Agreement, that Canada and India share an interest in expanding their commercial ties.

The Comprehensive Economic Partnership Agreement (CEPA) negotiations between India and Canada were relaunched in March 2022, and the two countries were eager to conclude them by the end of 2023. In fact, nine rounds of negotiations had already occurred by July 2023, and discussions on goods, trade remedies, and norms of origin were in progress before the conflict arose.

However, this is not the first time that negotiations have failed. Initiated in 2010 by the Manmohan Singh administration, CEPA negotiations were abandoned in 2017 due to divergent perspectives. Despite that, business and trade ties have flourished in their natural course.

Trade Relations Between the Two Countries and the Impact

In sectors spanning from infrastructure to start-ups, India has been a key destination for Canadian investments from organizations such as the Canadian Pension Plan Investment Board and the asset management firm Brookfield. Canada is the eighteenth greatest foreign investor in India, having invested a total of $3.3 billion between April 2000 and March 2023, or 0.5% of the country's total Foreign Direct Investment inflows.

India was also Canada's ninth largest trading partner in 2022, with bilateral trade between them touching $8.16 billion in Financial Year 2023.

As economic ties between India and Canada are driven by commercial considerations and they do not compete on similar products but trade in complementary products, it is unlikely that these events will impact trade and investment between the two countries.

Read more at:

- https://economictimes.indiatimes.com/news/economy/foreign-trade/what-has-trade-and-investment-ties-to-fear-amid-india-canadas-intensifying-diplomatic-tensions/articleshow/103776408.cms?from=mdr

- https://www.thehindu.com/business/Economy/the-potential-economic-and-trade-fallout-of-strained-indo-candian-diplomatic-relations-explained/article67349441.ece

- https://www.reuters.com/world/americas/india-canada-row-what-is-stake-2023-09-19/

- https://www.businesstoday.in/magazine/the-buzz/story/india-canada-tensions-as-the-diplomatic-row-escalates-what-impact-can-it-have-on-bilateral-trade-400035-2023-09-29

India’s tryst with Data Privacy norms: Contemporary legal changes and challenges

-Vidushi Jaiswal

Introduction

On August 11, 2023, the President of India signed the Digital Personal Data Protection Act, 2023 (Act or DPDP Act). The new Act has a lot of modifications that makes it distinct from its predecessor, the 2022 Bill. Some of the important changes include, among other things, the mention blacklisted countries with respect to the cross-border data transfer, the restrictions imposed on the data fiduciaries, exclusion of the data fiduciaries from directly accessing children's data without any parental consent. The Act is brief, and its provisions are principle-based and high-level, there is a lot of scope for further deliberation considering that the act will be aided by further rules.

Understanding the essentials: Navigating through the intricacies of the Regulation

What is personal data?

Personal data is data about an individual that can be used to identify them. This comprises identifiers such as name, phone number, Aadhaar, and PAN. It also contains profile data or usage data, such as a user's preferences and choices. It only protects 'digital' data, not offline records. It does not apply to non-personal data (business insights, anonymised data).

The primary question that lies here is, who will be affected by this Act?

Anyone who works with digital personal data. Collecting, recording, structuring, storing, distributing, or any other automated activity on data is referred to as processing. The law recognises two types of entities:

A. The Data fiduciaries are the companies that establish the "purpose and means" of processing data. These are businesses that make decisions about their users' data. They are also known as data controllers in other parts of the world. They decide why data is required, how it will be used, and how long it will be kept. They are legally responsible for the data of their users.

B. Data processors: Companies that handle data on behalf of fiduciaries. Cloud service providers, for example, who host data for their customers, or 'know-your-customer' (KYC) service providers who undertake KYC on behalf of banks. Fiduciaries direct their actions.

How would the companies collect the personal data?

To acquire personal data, fiduciaries must either obtain an individual's consent or collect/process the data for specific "legitimate uses" authorised by law.

A. Consent: Fiduciaries must provide users with a notice that describes what data is collected, why it is gathered, the users' rights, and how they can file a complaint with the Data Protection Board (enforcing authority). Individuals must provide clear and affirmative consent to process their data for the specified purpose after reading this notice. Individuals must also be able to withdraw their consent.

B. Legitimate uses: Companies do not require their consent individually if they process data for certain "legitimate uses" recognised by law. This covers scenarios in which an individual freely contributes her data for a specific purpose, or where data is processed to satisfy a specific need.

Is the Regulation a pathbreaking one: Answering the why and how?

The regulation has been a path breaking one because of the multiple layers that are attached to this Act. Once these layers unfold, the revolutionary changes brought forth through this act reveal the true nature of the regulation. There are definitely certain gaps that need to be addressed and can only be resolved through consistent deliberation.

1. Cross border data flows have been made easier.

Cross border data transfers are allowed except for the countries that have been blacklisted. However, there is no definite criteria or parameters on which a country could be blacklisted. In a world which is dictated by the internet, data privacy rules and compliances will give a good head start to India's data transfer regime. Interconnectedness is the pillar of global trade and economy and anything that facilitates a hassle free and safe data transfer is of utmost importance.

2. The new act will increase scope of contracts

It will increase the scope of negotiations and the communication between the data fiduciaries and data processors. It definitely sets out obligations and rights of the data fiduciaries but does say much on the obligations of the data processors. Therefore, there is scope on the development of the set liabilities of the data processors.

Business may process children's data with only verifiable parental or guardian consent.

Business may process the children's data with only verifiable parental or guardian consent. This is valid for children up to 18 years of age and they are not allowed to track data, monitor or send targeted advertisements to these children. However, the government provide some companies certain relaxations in case they are able to prove that their processes do not harm the children's data.

Conclusion: Contemporary legal norms and challenges

There are a lot of challenges attached to this new data Act. These challenges include themes like the proposed data regulations for children and the exemptions provided to certain entities in case they fall into the ambit due to certain considerations made by the government. It also involves the non-bifurcation of the rights and liabilities of the data fiduciaries and data processors.

As far as the data privacy norms for children are concerned, the companies are not allowed to access data of children below the age of 18 without the parental or guardian consent. Now, the question that arises here is what is the AI or procedure to ascertain that the permission has been granted by the child's real parent or guardian? Is there any specific verification process that would ensure the credibility of the process? What is the process of determining targeted advertisements and how will they cater to the requirements in an efficient manner? What about the companies that genuinely deal with children algorithm and assess their data for the effective utilisation in future?

Another noteworthy issue is that of the companies that would enjoy exemptions from the government in the light of sovereignty, integrity, security and public interest and order. It should also be noted that the functions of the data fiduciaries and that of the processors are not water tight compartments and quite flexible and interchangeable. The question that arises here is that at what point a data processor would become a data fiduciary?

This new Act has been embarked and we can only see a brighter future for India.

Read more at:

- Digital Personal Protection Bill, 2022 (MeitY, 2022) <https://www.meity.gov.in/writereaddata/files/The%20Digital%20Personal%20Data%20Potection%20Bill%2C%202022_0.pdf>
- Darshan Upadhyay , Soumya Shanker and Mriganc Mishra, "Decoding the Digital protection Act" (Mondaq, 24 August 2023)< https://www.mondaq.com/india/privacy-protection/1358400/decoding-the-digital-data-protection->
- India passes digital personal data protection act(Hunton Andrews Kurth, 22 August 2023) <https://www.huntonprivacyblog.com/2023/08/22/india-passes-digital-personal-data-protection-act/ >
- Decoding digital personal protection act, 2023(KPMG, August 2023) <https://kpmg.com/in/en/home/insights/2023/08/decoding-digital-personal-data-protection-act-2023.html>
- Digital Personal protection Act, 2023(Deloitte, August 2023) <https://www2.deloitte.com/in/en/pages/risk/articles/the-digital-personal-data-protection-act-2023.html>

Navigating Through The Mediation Act, 2023: A Game Changer Or An Underwhelming Attempt To Crack Add

-Purava Rathi

Background

The Mediation Act, 2023 ("The Act") was notified in the Official Gazette on 15th September 2023. The Act is a comprehensive code in itself. The Act introduces online mediation, community and institutional mediation for commercial as well as civil disputes. The Act also refers to parties' discretion to opt for pre-litigation mediation as opposed to the mandatory requirement in the Bill.

Such introductions are complemented by effective implementation procedures. The Act is a substantially improved version of the earlier frameworks and also incorporates international norms and principles. Therefore, the Act has the potential to be an absolute game changer in dispute resolution.

Impetus for Passing the Act

The Act comes at a time when the courts are stressing the need to turn to alternative dispute resolution mechanisms to lessen the burden of the judiciary while also saving time and resources of the parties. A dedicated piece of legislation acts as a legal recognition that fosters the confidence of parties in the process. The Act aims to structure and streamline the procedure for conducting mediation and delineate the rights and obligations of the parties and the mediator.

Understanding the Nuances of the Act

1. *Mediation Agreement:* The mediation agreement or the clause dealing with mediation within the agreement must be in writing. The term "in writing" has been construed to mean, (i) a document between parties; (ii) contained in an exchange of communications or (iii) contained in any pleadings where one party alleges the existence of such agreement, and the assertion is not denied by the other party.

2. Pre-Litigation Mediation: The particular provision was a mandatory requirement under the 2021 Bill. However, the same has been done away with and is made optional subject to the discretion of the parties.

3. Procedure for appointment of the mediator: The Act recognises the principle of party autonomy and allows the parties to decide the procedure for the appointment of their mediator. They may also apply to a Mediation Services Centre for the same. While choosing the mediator, the parties must bear in mind that the mediator possesses the necessary qualifications and experience as prescribed in the Act.

4. Nature of the Dispute: The Act provides that civil as well as commercial disputes can be mediated. However, certain disputes have expressly been excluded from the ambit of the Act. These disputes include disputes of a criminal nature, disputes involving and affecting the rights of third parties, environmental matters, disputes relating to the collection of tax, etc.

5. Prescribed time limit: Mediation proceedings under the Act must be completed within a period of 120 days from the date of the first appearance before the mediator, which may be extended for a maximum period of 60 days with the mutual consent of the parties.

6. Date of Commencement and Expiration: The mediation process commences on the date of receipt of notice initiating mediation. The date when mediator communicates his consent, or the date of appointment of the mediator by the mediation service provider is to be considered. The proceedings are deemed to terminate when the settlement agreement is signed or when the mediator signs the non-settlement report. The proceedings may also terminate on the date when parties opt out of mediation.

7. Institutional and Community Mediation: The Act provides for the establishment of the Mediation Council of India ("MCI") to develop India as a centre for domestic and international mediation. The main function of this Centre would be to oversee the conduct of institutional mediation.

Community mediation entails the conduct of mediation by a panel of mediators set up by the District Magistrate or Legal Services Authorities. The qualifications for selection to the panel are 'persons of standing', or persons who have contributed to society, etc.

8. Challenge: An aggrieved party may challenge the settlement agreement within 90 days on the grounds of fraud, corruption, impersonation, or in cases where the mediation was conducted in disputes or matters not fit for mediation.

9. Settlement and execution: In case of a successful mediation, the Mediation Agreement must be in writing. It must be signed by the parties and authenticated by the Mediator. This agreement is enforceable in accordance with the provisions of the Code of Civil Procedure, 1908, in the same manner as if it were a judgment or decree passed by a court. The enforcement, challenge, and registration of the agreement, will be deemed to have been undertaken within the territorial jurisdiction of such court or tribunal.

Implications

The Act is quite promising in terms of furthering its objectives. By providing a structured procedure and instating the confidence of parties in the process, mediation can be resorted to as the first choice of the parties. Mediation shall help in preserving relationships between the parties, business relations, or otherwise.

By providing a definite timeline, one can expect timely resolution of disputes, especially in cases where time is of the essence. Further, mediation as a process is relatively more cost-effective than litigation. Thus, making it a lucrative and accessible option for all sections of society.

Conclusion

A dedicated piece of legislation governing mediation was long overdue. The legislature has taken a step in the right direction by acknowledging the voluntary nature of the process and legally recognising a settlement reached via mediation. Since India is a signatory to the Singapore Convention, an Act as such was expected to reflect the provisions of the Convention. What remains to be seen now is if the Act is being implemented effectively.

Read more at:

1. https://www.mondaq.com/india/arbitration--dispute-resolution/1369216/what-how-where-when-and-why-of-the-mediation-act-2023
2. https://www.mondaq.com/india/arbitration--dispute-resolution/1368218/the-mediation-act-2023
3. https://www.livelaw.in/articles/evaluating-the-mediation-bill-237563

Decoding the Zee-Sony Merger: An attempt to bypass commercial laws

-Minal Gupta

Introduction

In 2021, Culver Max Entertainment, operating under the guise of Sony Entertainment India, presented a proposal to acquire Zee Entertainment Enterprises. The completion of this acquisition, as anticipated in the near future, would elevate them to the second-largest entertainment conglomerate in the nation, trailing only Disney India & Star in terms of market share. The agreement specifies that Sony will assume a dominant position in the newly merged entity, while the Zee promoter family will initially retain approximately 4 percent ownership, with an option to potentially increase their stake to 20 percent. As part of the definitive agreements, the ZEE promoters have agreed to limiting their equity ownership in the combined company to 20 percent of its outstanding shares.

Background

Sony faced significant challenges when it lost broadcasting rights for the prestigious Indian Premier League (IPL), resulting in a twofold increase in revenue and a sixfold surge in net profit. Meanwhile, Zee encountered hurdles as stock swap discussions with Viacom 18 faltered, and Invesco, a major shareholder, raised corporate governance concerns. Zee's limited negotiation leverage and a substantial Rs. 11,000 Cr debt at the holding company level compounded their issues. Recognizing a mutual benefit, Sony stepped in as a white knight.

Sony-Zee Merger Strategy

At the current valuation, Zee Entertainment is set to retain a 47.07% stake in the merged entity, giving Sony Pictures a larger 52.93 percent share. Sony commits to ensuring the combined company maintains a minimum of Rs. 11,000-12,000 Cr. in cash reserves. Zee Entertainment shareholders will receive pro-rata shares in the amalgamated entity as ZEE Entertainment concludes its existence as a distinct legal entity. Additionally, both entities will conduct due diligence on each other within a 90-day timeframe through designated data rooms.

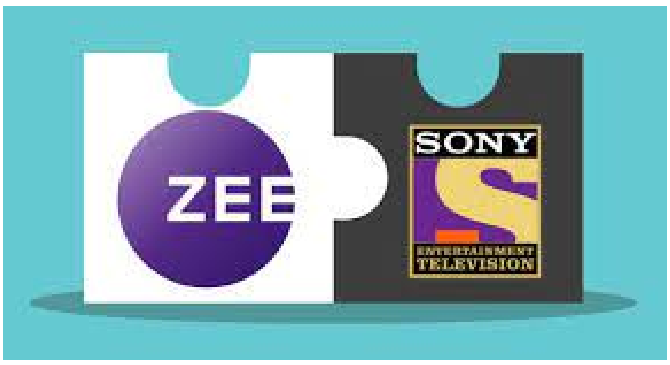
Speed Breakers

In October 2021, a single judge of the Hon'ble Bombay High Court issued an injunction against Invesco Developing Markets Fund's order to convene a ZEE shareholder meeting. Invesco had proposed an agenda, including the removal of three non-independent ZEE directors and the appointment of six independent directors, aiming to protect minority shareholders and enhance governance. Zee's board didn't respond to the request, prompting Invesco to approach the NCLT, Mumbai. ZEE initially deemed Invesco's request illegal, but the Bombay High Court overturned the injunction.

Regulatory Response

In August 2022, the CCI cautioned that the merger between Zee and Sony could result in an abuse of their dominant market position, in accordance with Section 4 of the Competition Act, 2002. This concern is especially pertinent in India's lucrative Hindi entertainment market. With a combined market share of around 45%, concerns were raised about its impact on advertising and channel pricing competition, posing a threat even to Disney India's Star network.

In response, Zee and Sony proposed behavioral remedies, including price incentives and independent advertising verticals. The CCI granted conditional approval to the merger in October 2022, without specifying the modifications required but emphasizing the prevention of market dominance abuse.



The NCLT Challenge

Despite receiving approval from the CCI, the merger process faced a substantial hurdle due to objections from creditors, including Axis Finance, JC Flower Asset Reconstruction, and IDBI Bank, citing concerns about ZEE's alleged loan defaults and fund misuse.

These objections centered on two main issues: a contentious non-compete fee arrangement and the appointment of Mr. Punit Goenka as CEO. Creditors argued that the non-compete fee disadvantaged lenders and ZEE's public shareholders, while regulatory scrutiny cast doubts on Mr. Goenka's eligibility. Nevertheless, the NCLT, after thorough deliberations, ultimately ruled in favor of the merger, which analysts predict will create a 10-billion dollars media giant with a dominant position in TV channels, streaming services, and film studios, holding a 26 percent market share in the country's TV network industry.

Conclusion

The Zee-Sony merger highlights the intricacies of media and entertainment mergers, emphasizing the need for proactive engagement with regulatory bodies and voluntary remedies to address concerns. NCLT's approval signifies a delicate balance between stakeholder interests and market competition, aligning legal considerations with the merger's strategic potential. Analysts anticipate substantial synergies and project the merger to establish India's largest entertainment network with a 26 percent viewership share, especially dominant in Hindi GEC and Hindi movies, making it a strong competitor against market leaders Star and Disney in the medium to long term.

Read more at:

- https://economictimes.indiatimes.com/industry/media/entertainment/media/nclt-approves-zee-sony-merger/articleshow/102594876.cms?from=mdr
- https://www.mondaq.com/india/shareholders/1359368/zee--sony-merger--a-journey-through-challenges-and-triumphs#:~:text=A%20Landmark%20Merger,%2C%20distribution%2C%20and%20broadcasting%20capabilities.
- https://www.financialexpress.com/business/industry-zee-merger-to-take-a-few-more-months-says-sony-group-3258858/

Non- Cooperative attitude for the basis of imposing penalty: Alankit Imaginations Ltd. v. DCIT

-Rohit Misra

Introduction

The Delhi Bench of the Income Tax Appellate Tribunal or ITAT comprising of Anubha V Sharma and N.K. Billaiya has held in the case of Alankit Imaginations Ltd. v. DCIT that a 'non-cooperative attitude' just by itself cannot be a ground for the imposition of penalties as such if the specific notices and the non-compliances has not been brought on the record.

Facts

The Assessee had challenged the penalty order under Section 272A(1)(d) of the Income Tax Act,1961. In its reply to the notice issued under Section 153(C) of the Income Tax Act, 1961, the assesse stated that the returns were filed and the assessments were completed in financial year 2011-12 with no demand. As per the assessee, the penalty order passed was in violation of principles of natural justice as the orders do not disclose as to which notice was not complied with.

Judgement

It was the contention of the assessee that since the orders don't specify which notice was ignored, penalties have been imposed without consideration. Additionally, the assessments being done in accordance with Section 153(C) and not Section 144 was given as grounds for there being no need for a punishment for non-compliance.

The DCIT however argued that the there was no such error in the findings of the Tax Authorities.

The tribunal had given thoughtful consideration to the matter on record. The impugned orders indicate that all the orders are similar except for change in figures relevant to the assessment years. It was noted by the tribunal that the penalty order in question did not mention as to which notice and under what provisions of law it was issued. The order also lacked details on how such order was served and which part was not responded by the assesse.

As a matter of the facts, all the assessments have been completed under section 153C of the Act and there was no particular inference drawn against the assessee to pass an order on judgement basis under section 144C of the Act.

The bench stated that the assessment officer (AO) was not justified in levying a penalty unless it is shown in the assessment order or even under the penalty order that during the assessment proceedings themselves the AO had formed the opinion that there was intentional non-compliance justifying issuing notice under Section 271(1) (d) or under Section 272A(1)(d) of the Income Tax Act.

The ITAT set aside the penalty orders as the assessments were completed under section 153C and not under section 144 and the AO had imposed penalties without specifically bringing on record the specific notices, their specific non-compliances and the satisfaction that there has been a non-compliance. In the light of aforesaid, the tribunal stated that the orders of Ld. Tax Authorities was not sustained and the impugned penalty orders were to be set aside.

Read more at:

- https://www.livelaw.in/tax- cases/non-cooperative-attitude-basis-imposing-penalty-itat-238313?infinitescroll=1.
- https://www.livelaw.in/pdf_upload/alankit-order-itat-493483.pdf.

SEBI Regulations on Finfluencers

-Jyotsna Sood

Finfluencers

Financial influencers, colloquially termed as “finfluencers”, are individuals or entities, often unregistered, who furnish financial advice and information pertaining to the various facets of personal finances through social media platforms. These influencers may include unregistered Investment Advisers(IAs) and Research Analysts who are frequently purported to affect the financial decisions of investors.

The Consultation Paper

On August 25, 2023, the Securities and Exchange Board of India, hereinafter SEBI, released the “Consultation Paper on Association of SEBI Registered Intermediaries/Regulated Entities with Unregistered Entities (including finfluencers)” which proposes to limit and regulate the association of such unregistered influencers with advisors and entities registered with SEBI. The paper was released a week after the Advertising Standards Council of India (ASCI) released its revised guidelines on influencer advertising that necessitated registration of finfluencers disseminating investment- related advice with SEBI.

Proposed Regulations

The rise of finfluencers and the convergent nature of their sphere of functioning with that of the SEBI has prompted scrutiny from the regulatory body which has expressed its concerns regarding the absence of regulatory control over such individuals in the form of mandatory disclosure and conduct requirements. With the aim of curbing their revenue sources and obstructing the “perverse incentives in the ecosystem”, SEBI has proposed to prohibit monetary and non-monetary association of its registered entities with unregistered finfluencers for promotional purposes. The consultation paper seeks to forbid entities registered with SEBI or stock exchanges or the Association of Mutual Funds in India (AMFI) from sharing confidential client information and paying referral commissions to unregistered influencers and requires them to actively disassociate themselves from unregistered entities by notifying the enforcement agencies concerned and registering complaints under Section 420 of the Indian Penal Code,1860.

Additionally, it has also proposed guidelines to regulate the finfluencers registered with the aforementioned regulatory bodies that include compulsory disclosure requirements and compliance with the prescribed code of conduct and the advertisement guidelines.

Read more at:

- https://frontline.thehindu.com/society/rise-of-finfluencers-sparks-debate-over-influence-and-accountability-personal-finance-sebi-asci/article67273277.ece
- https://www.sebi.gov.in/reports-and-statistics/reports/aug-2023/consultation-paper-on-association-of-sebi-registered-intermediaries-regulated-entities-with-unregistered-entities-including-finfluencers-_75932.html
- https://economictimes.indiatimes.com/markets/stocks/news/sebi-to-curb-finfluencers-to-help-investors-get-accurate-unbiased-info/articleshow/103324160.cms?from=mdr

Amendments to the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016

- **Priyanshu Danu**

In a significant move aimed at refining the Corporate Insolvency Resolution Process (CIRP), the Insolvency and Bankruptcy Board of India (IBBI) introduced crucial amendments to the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (CIRP Regulations) on September 18, 2023. The amendments, elaborated below, aim to address several critical issues identified in the resolution process, striving to enhance efficiency and transparency and will be effective immediately.

Taking Control and Custody

One of the key amendments, Regulation 3A, outlines a structured procedure for the interim resolution professional (IRP) or resolution professional (RP) to take control and custody of the assets and records of the corporate debtor (CD). This move resolves the previous lack of clarity in the regulations, ensuring a smoother transition of control during the insolvency proceedings.

Timely Submission of Claims

To mitigate delays caused by late submissions, Regulation 12 of the CIRP Regulations has been modified. Creditors can now submit claims until the issuance of a request for resolution plans under Regulation 36B or within 90 days from the insolvency commencement date, whichever is later. This change empowers the RP to assess late claims and present their views to the committee of creditors (CoC) for consideration.

Empowering Authorised Representatives (ARs)

Amendments to Regulation 16A enhance the responsibilities of Authorized Representatives (ARs) in recognition of their pivotal role and are now tasked with aiding creditors in comprehending committee discussions, reviewing RP-prepared minutes, and evaluating resolution plans. These changes demand a higher level of involvement from ARs, justifying the increased fees corresponding to their augmented responsibilities.

Committee Oversight and Audit

Regulation 30B introduces a groundbreaking provision allowing CoC members to propose an audit of the CD. This audit, if approved by the CoC, ensures a comprehensive examination of the CD's financial health, with associated costs deemed insolvency resolution process expenses. This fosters an environment of accountability and transparency, further empowering the CoC in their decision-making process.

Enhanced Information Disclosure

In order to improve transparency and facilitate potential resolution applicants, Form G has been amended. The revised format provides detailed information, enabling prospective resolution applicants to make informed decisions without unnecessary complexity.

Transparent Decision-Making

The amendments also focus on enhancing the AA's understanding of CoC decisions. Form H, the compliance certificate, now includes minutes of the CoC meeting where the resolution plan was approved. This inclusion provides the AA with valuable insights into the rationale behind the CoC's decisions, ensuring a more transparent and contextually informed evaluation process.

Seamless Assignment Processes

Regulation 28 has been refined, setting a strict timeline of seven days for informing the IRP/RP about the assignment or transfer of debt. This timely communication streamlines the process, reducing bureaucratic hurdles and allowing the CoC to function more efficiently.

Read more at:

- https://www.livelaw.in/ibc-cases/ibbi-introduces-amendments-to-cirp-regulations-238205
- https://www.argus-p.com/updates/updates/amendments-to-the-insolvency-and-bankruptcy-board-of-india-insolvency-resolution-process-for-corporate-persons-regulations-2016/

The regulatory tightening of online payment gateways: Need of the hour?

- Pushpendra Dixit

Introduction

In a recent move, the Global payment services giant PayPal has challenged the order of the Single bench of the Delhi HC and the division has sought a reply from the Union Government.

In recent years, online payment gateways have become an essential part of everyday transactions. With the growth of e-commerce and the increasing digitization of financial services, platforms such as PayPal, Paytm, and Google Pay have gained immense popularity. However, the rapid rise of these payment service providers has raised concerns regarding their regulation.

Payment service providers form an integral part of the rapidly growing e-commerce industry, facilitating secure and seamless online transactions. However, the regulatory framework governing these payment gateways lacks clarity which has led to several litigations.

Background:

_Delhi High Court has earlier ruled against PayPal and held that PayPal falls under the definition of a payment service provider under the rules of the Prevention of Money Laundering Act (PMLA), 2002. This judgement highlights the need for stricter regulations on payment service providers especially when they involve cross-border transactions, to safeguard the interests of consumers and ensure the stability and integrity of the financial system.

PayPal knocked the doors of the Court when the Financial Intelligence Unit imposed a penalty of 96 lakhs on the grounds of alleged violations of provisions of the PMLA. The Single Bench held that PayPal can be classified as a "Payment System Operator" under PMLA. Therefore, it is required to make certain disclosures.

Current Regulatory Framework for Payment Gateways

The Payment Gateways prior to 2020 were governed by the Payment & Settlement Act, 2007. The Act created a framework for oversight and monitoring of digital payment service providers, as well as standards for client protection and dispute resolution. However, with the evolution of the digital payment system, these providers by Intermediaries Directions issued by RBI in 2009. Under this scheme, banks were required to act as a nodal entity between merchants and intermediaries.

In the year 2020, the Reserve Bank of India issued Guidelines on Regulation of Payment Aggregators and Payment Gateways, that mandated RBI approval for entities planning to venture into payment service to merchants.

All these laws provide a basic regulatory mechanism for the payment gateways, but in the absence of extensive legislation outlining detailed provisions, there exists a loophole in the current regulatory mechanism. The recent judgement highlights the same, the judgements underscore the importance of detailed provision in statute for better compliance.

Possible Implications of Prospective Regulations

The implementation of stricter regulations on online payment gateways has the potential to result in many implications. First and foremost, the implementation of stringent anti-money laundering and fraud prevention measures can contribute to the establishment of a safer and more transparent financial sector. This has the potential to foster a sense of assurance among users and mitigate the likelihood of occurrences of financial malfeasance. Additionally, the implementation of stricter laws may result in heightened expenses for payment service providers.

This is due to the necessity of investing in system and process upgrades in order to adhere to the revised requirements. Consequently, this could lead to an increase in transaction fees for both consumers and businesses.

Furthermore, the implementation of stricter regulations may result in a reduction in the quantity of payment service providers operating in the market. This is because smaller and less regulated entities may encounter difficulties in fulfilling the necessary criteria.

This has the potential to decrease competition and restrict the range of options available to users. In general, the implementation of stricter regulations in the online payment business might have favourable results, such as enhanced security measures. However, it is crucial to carefully evaluate the associated trade-offs to achieve an optimal equilibrium between regulatory measures and innovation.

Conclusion

In conclusion, these recent developments raise important questions about the overall regulatory framework for payment service providers. While the judgment has brought clarity on PayPal's regulatory position, it also highlights the need for a comprehensive and updated regulatory framework that can effectively address the challenges posed by the rapidly evolving online payment landscape. It is imperative for regulatory authorities to carefully consider the implications of such judgments and work towards creating a transparent, secure, and fair regulatory environment that encourages innovation while safeguarding consumer interests.

Additionally, collaboration between regulators, payment service providers, and other stakeholders is crucial to ensure that the regulatory framework remains adaptive and responsive to the changing needs of the industry, ultimately fostering a thriving and inclusive online payment ecosystem. Only through such coordinated efforts can we achieve a balance between regulatory oversight and technological advancements, thus advancing the digital economy while safeguarding consumer protection and maintaining financial stability.

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Read more at:

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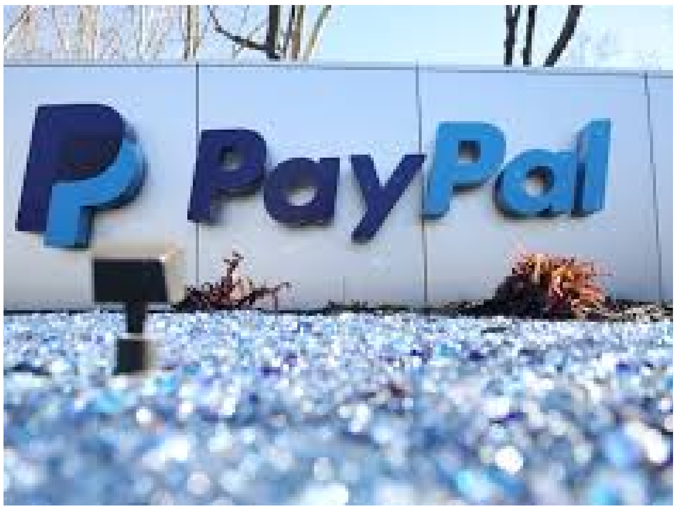

CCI's draft rules on value of transactions for combinations

- Anisha Gupta

Introduction

In recent years, mergers and acquisitions have become a commonplace strategy for businesses seeking growth, market expansion, and operational synergies. In India, the Competition Commission of India (CCI) plays a pivotal role in regulating these combinations to ensure fair competition in the marketplace. To streamline the process and address various concerns, the CCI has proposed new draft rules on the value of transactions for combinations. These rules are designed to provide a comprehensive framework for calculating the value of a combination, which is a critical factor in determining whether a merger or acquisition would trigger a review by the CCI under the Competition Act, 2002.

Proposed Changes

_The draft rules propose that the value of a combination should include the "consideration paid" for the transaction. This consideration encompasses not only the purchase price of the shares or assets but also other financial elements. Importantly, it explicitly includes non-compete fees and royalties within the scope of the valuation.

- Non-compete Fees: Non-compete fees refer to costs included in agreements that prohibits any individual or entity from undertaking activities that are competitive to a former employee or business parter.

- Royalties: The inclusion of royalties in the valuation is particularly relevant in cases where intellectual property rights are involved. Royalties are payments made for the use of patents, copyrights, trademarks, or other intellectual property assets. By considering these royalties, the rules prevent parties from undervaluing the transaction by separating IP-related payments from the main transaction value.

In addition to the consideration paid, the draft rules also suggest that the value of assets or the turnover of the business being acquired should be considered. This provision is significant because it ensures that not only the financial aspects but also the economic substance of the transaction is evaluated.

Enhanced Competition Scrutiny

By comprehensively addressing these components in the valuation of combinations, the draft rules aim to prevent parties from manipulating transaction values to avoid regulatory scrutiny. This not only enhances transparency but also reinforces the CCI's ability to effectively evaluate the competitive implications of mergers and acquisitions in India.

The broadening of the scope in the Competition Commission of India's (CCI) draft rules carries several significant implications. Firstly, it extends the purview of CCI scrutiny to more combinations, regardless of their size. Smaller transactions that previously escaped regulatory scrutiny due to falling below specific financial thresholds will now come under the regulatory radar. The aim here is to eliminate potential loopholes and prevent regulatory arbitrage, ensuring that parties can no longer structure deals in ways that artificially lower transaction values to avoid mandatory notification thresholds. Consequently, the CCI can more effectively safeguard competition, even in cases that might have been overlooked previously.

Secondly, the expanded scope allows for a more comprehensive assessment of the competitive impact of combinations. It recognizes that deals can impact competition in diverse ways, considering elements like non-compete fees, royalties, and other considerations. Even when the transaction value is not exceptionally high, the CCI can better evaluate the potential implications on competition.

Furthermore, smaller transactions, while individually modest, can collectively have a substantial impact on a market. Subjecting these smaller combinations to regulatory review enables the CCI to conduct a holistic analysis of the market's competitive dynamics, identifying and addressing emerging anti-competitive trends early on. This, in turn, promotes a fair and competitive marketplace, aligning with the broader objectives of competition law, which prioritize preserving competition and safeguarding consumer interests.

Read more at:

- https://economictimes.indiatimes.com/news/economy/policy/cci-issues-draft-norms-on-combinations-under-amended-competition-law/articleshow/103441321.cms?from=mdr

- https://www.jsalaw.com/newsletters-and-updates/cci-publishes-draft-combination-regulations-for-public-consultation/#:~:text=The%20Draft%20Combination%20Regulations%20set,scope%20of%20the%20'SBOI'.&text=The%20value%20of%20the%20transaction%20must%20include%20every%20valuable%20consideration,or%20deferred%2C%20cash%20or%20otherwise.

- https://www.businesstoday.in/latest/corporate/story/cci-releases-draft-norms-for-regulation-of-combinations-397004-2023-09-05

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Discretion of the Liquidator in the final bidding: Eva Agro Feeds Pvt Ltd v Punjab National Bank

- Rahul Mishra

Introduction

In the appeal of Eva Agro Feeds Private Limited Vs Punjab National Bank and Anr., Civil Appeal No.7906 of 2021, a two Judge Bench of the Supreme Court comprising of Justice B. V. Nagarathna and Justice Ujjal Bhuyan passed a Judgment dated 06-09-2023. The judgement was passed against the order passed by the National Company Law Appellate Tribunal. It held that the Liquidator was not justified in rejecting the Appellant's highest bid without citing any reasons thereof and thereby, going ahead to conduct another round of auction merely on the expectation that a still higher price may be obtained.

Background

The primary dispute was between the rights of the highest bidder and the liquidator's discretion to reject the highest bid after the bidding process was over. There was an inconsistency concerning the liquidator's discretionary power between the Insolvency and Bankruptcy Code, 2016 (IBC) and the E-Auction Process Information Document (hereinafter "Document"). The Document outlined the particulars of the bidding procedure for potential bidders. In this particular instance, it gave the liquidator the sole authority to approve or reject any bid but it is important to note that one of the document's clauses required that it be read alongside the IBC and any related regulations.

Facts of the case

A Corporate Insolvency Resolution Process under the IBC was initiated on application by Huvepharma Sea Private Limited against M/s Amrit Feeds Ltd. (Corporate Debtor). The National Company Law Tribunal (NCLT) admitted the application on 22-10-2019. On 19-02-21, a Liquidation Order was passed due to the failure of the CIRP. An e-auction was held to sell the corporate debtor's assets.

Due to the failure of the first auction, a second auction was held. The appellant, Eva Agro Feeds Pvt. Ltd., took part in the e-auction and deposited Rs. 1 crore as earnest money. Thereafter, the Appellant received an e-Auction Certificate on 20-07-2021 from the Liquidator, which certified that the Appellant had won the auction for the assets of the Corporate Debtor. However, the Liquidator cancelled the e-Auction and informed Eva Agro Feeds Private Limited. Eva Agro Feeds filed an application under Section 60 of the IBC, which was allowed, and they were asked to deposit the balance sale consideration within a specified time.

Eva Agro Feeds following the order, deposited the balance on 10-09-2021. They received a Sale Certificate on 15-09-2021. But Punjab National Bank, a financial creditor of Amrit Feeds Limited, filed an appeal against the NCLT's order, which was allowed by the National Company Law Appellate Tribunal (NCLAT) on 30-11-2021. Consequently, the NCLT's order was set aside, allowing the Liquidator to initiate a fresh auction process.

NCLT and NCLAT Ruling

The NCLT had, vide Order dated 12-08-2021, held that the Liquidator had cancelled the e-bidding process anticipating higher price in future auction process, which cannot be allowed, as there cannot be an endless wait to obtain a better price. The NCLT directed the Liquidator to communicate to the Appellant to deposit balance sale consideration. The Liquidator did not challenge the NCLT order dated 12-08-2021 before the NCLAT and rather, went ahead to comply with the directions of the said order. However, Punjab National Bank, filed an appeal against the NCLT Order dated 12-08-2021 before the Hon. National Company Law Appellate Tribunal. The NCLT Order dated 12-08-2021 was invalidated as a result of the abovementioned Appeal being granted by NCLAT in an order dated 30-11-2021. As a result, the liquidator was given permission to start a new auction procedure.

Judgment

The Supreme Court observed that no reasons had been assigned by the Liquidator for cancellation of the E-auction held on 20.07.2021. Further, with regards to discretion as provided in in terms of Clause 3(k) of the Document, the court ruled that if an arbitrary cancellation is allowed, it will not only lead to unavoidable expenses but also erode the creditability of the auction process. Further, the cancellation of an auction can only be done in a scenario wherein fraud or collusion has vitiated the auction process.

The court stated that rejection should be in accordance with Clause 11 A of Schedule I of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 (Regulations) (Mode of sale) which states “where the liquidator rejects the highest bid in an auction process, he shall intimate the reasons for such rejection to the highest bidder and mention it in the next progress report”.

This Clause was added w.e.f. September 30, 2021, which is far earlier than the e-Auction which was held on July 20, 2021 but the underlying principle behind its addition —the principle of natural justice— remains the same. The principle calls for the provision of justifications for rejecting the highest bidder.

As a result, the Bench determined that there was no rationale for rejecting the appellant's offer in light of the aforementioned observations and further, that the discretion of the Liquidator to cancel auction which is otherwise valid is not absolute.

Read more at:

- https://www.scconline.com/blog/post/2023/09/09/no-absolute-unfettered-discretion-of-liquidator-to-cancel-valid-auction-supreme-court-legal-news/
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