

Corporate & Commercial

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New Classification of MSMEs

Government of India enacted Micro, Small and Medium Enterprises Development Act, 2005 (**MSME Act**) under which classification of micro, small and medium enterprises (**MSME**) was dependent on two factors: (i) investment in plant and machinery; and (ii) turnover of the enterprise. Furthermore, different thresholds were prescribed for enterprises engaged in manufacturing and services sector for being classified as an MSME based on the aforesaid factors.

However, recently, under Aatmanirbhar Bharat Abhiyan (**ABA**), Ministry of Micro, Small and Medium Enterprises, vide its notification dated June 1, 2020, revised MSME classification by inserting a composite criterion for both investment in plant and machinery and annual turnover of enterprises. Also, the distinction between the manufacturing and the services sectors under erstwhile MSME definition has been done away with. This removal will create parity between the sectors.

A comparison of the erstwhile MSME classification to the revised classification where the investment and annual turnover, both are to be considered for classification of an enterprise as an MSME, is set out below:

Erstwhile MSME Classification			
Criteria: Investment in Plant and Machinery/Equipment			
Classification	Micro	Small	Medium
Manufacturing Enterprises	Investment not more than INR 25 lakh	Investment not more than INR 5 crore	Investment not more than INR 10 crore
Enterprises rendering Services	Investment not more than INR 10 lakh	Investment not more than INR 2 crore	Investment not more than INR 5 crore
Revised MSME Classification (w.e.f. July 1, 2020)			
Composite Criteria: Investment in Plant and Machinery/Equipment and Annual Turnover			
Classification	Micro	Small	Medium
Manufacturing Enterprises and Enterprises rendering Services	Investment in P&M/Equipment not more than INR 1 crore & Annual Turnover not more than INR 5 crore	Investment in P&M/Equipment not more than INR 10 crore & Annual Turnover not more than INR 50 crore	Investment in P&M/Equipment not more than INR 50 crore & Annual Turnover not more than INR 250 crore

This new classification, which came into effect from July 1, 2020, has been introduced by the Government to boost businesses and put to rest the growing fear among MSMEs of losing benefits granted under the MSME Act on account of outgrowing the erstwhile thresholds of classification. While this is a welcome initiative by the Government, various questions remain unanswered, such as the exact scope of 'plant and machinery' and whether the previous guidelines on calculation of investment towards plant and machinery will still be applicable.

Further, it is pertinent to note that the Finance Minister has clarified that start-ups are eligible to avail relief measures announced for MSME under the ABA. While start-ups are not explicitly covered under the definition of MSMEs, start-ups operating and engaged in the manufacturing and services sector may consider registering themselves as an MSME on the Udyog Aadhar Portal (considering the revised classification of MSMEs). By registering as an MSMEs, start-ups can avail various other benefits offered to MSMEs under the ABA. Official notifications in this regard are awaited.



Fresh Start Scheme to support businesses

In order to support local businesses during the economic disruption caused due to Covid-19, the Government of India, Ministry of Corporate Affairs on March 30, 2020 introduced Companies Fresh Start Scheme, 2020 (**CFSS 2020**). This scheme provides an opportunity to companies which have defaulted in filing of any of the documents, statements, returns, including annual statutory documents to the MCA-21 Registry (Defaulting Company), to make good their past filing related non-compliances and enable the company to start on a clean slate. CFSS 2020 came into force on April 1, 2020 and shall be available till September 30, 2020.

Salient features of Fresh Start Scheme

- **Non applicability of CFSS 2020** – The CFSS 2020 is not applicable in following circumstances:
 - Companies against which action for final notice for striking off the name under section 248 of the Companies Act, 2013 (**CA 2013**) has already been initiated by designated authority
 - Where an application has already been filed by company for action of striking off name of the company from Registrar of Companies
 - Companies which have amalgamated under scheme of arrangement or compromise under CA 2013/CA 1956
 - Where application has already been filed for obtaining dormant status under section 455 of CA 2013 before CFSS 2020
 - Vanishing companies
 - Where any increase in authorized share capital is involved and also to charge related documents (CHG-1, CHG-4, CHG-8 and CHG-9)

However, Government of India, Ministry of Corporate Affairs has issued an additional scheme dated June 17, 2020 called 'Scheme for relaxation of time for filing forms related to creation and modification of charges under CA 2013' (**Scheme**) by which certain relaxations in timelines have been provided for filing of Form No. CHG-1 and Form No. CHG-9. The details of this Scheme are discussed in subsequent parts of this note.

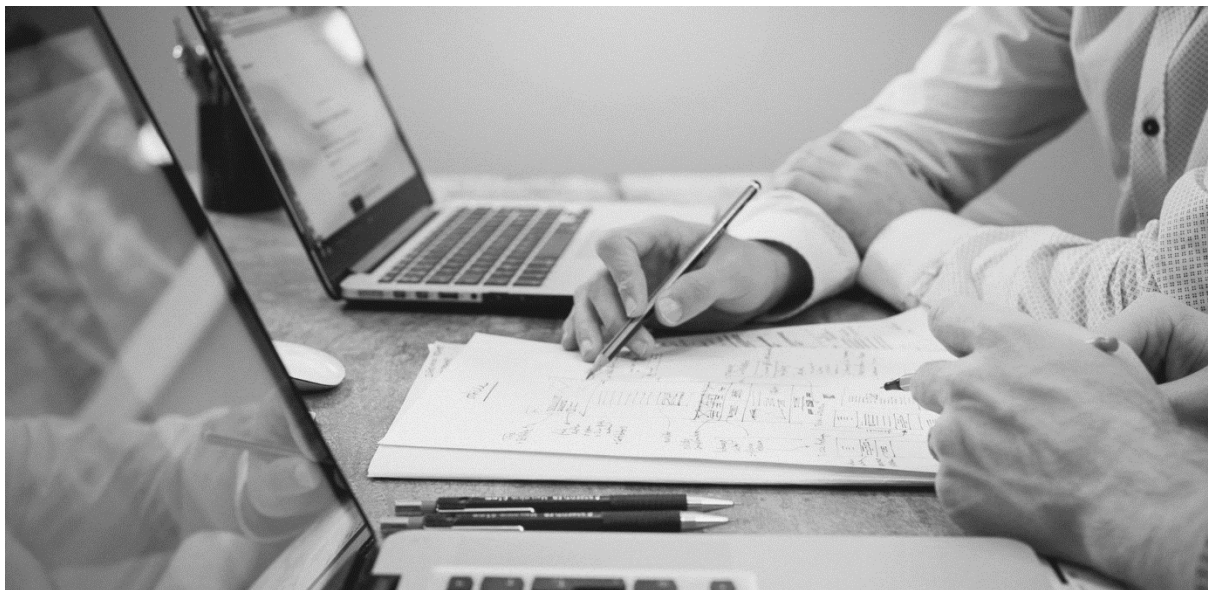
- **Normal fees for belated filing of document(s)** – No additional fee is required to be paid for belated filing of document(s) under the CFSS 2020. Every Defaulting Company is only required to pay normal fees as prescribed under Companies (Registration Offices and Fee) Rules, 2014 (**Companies Fee Rules, 2014**) for such belated filing.
- **Immunity against prosecution or proceedings** – It provides an opportunity to Defaulting Company to seek immunity against any prosecution or proceedings for belated filings of documents under CA 2013/CA 1956 made under CFSS 2020, by filing e-Form CFSS 2020 within 6 months post closure of CFSS 2020. However, any consequential proceedings, including any proceedings involving interests of any shareholders or any other person qua the company or its directors or key managerial personnel, are not covered. This immunity is not available for management disputes pending before any court of law or tribunal. Further, immunity shall not be provided in cases where court has ordered conviction in the matter or an order imposing penalty has been passed by adjudicating authority under CA 2013/CA 1956 and no appeal has been preferred against order under CFSS 2020. After issuance of immunity certificate, designated authority will be obligated to withdraw prosecution(s) pending, before the concerned court(s) and proceedings for adjudication of penalties under Section 454 of CA 2013.
- **Precondition to seek immunity** – If Defaulting Company desires to seek immunity against prosecution or proceedings for belated filing made under CFSS, 2020, it will have to withdraw any appeal that has been filed against any notice issued or complaint filed or an order passed by a court or by an adjudicating authority under CA 2013, before competent court or authority for violation of the provisions under CA 2013/CA 1956. Applicant is required to withdraw appeal and furnish proof of the same before filing an application for issue of immunity certificate.
- **Special measures for cases where the order of adjudicating authority was passed but appeal was not filed** – In cases where due to delay in filing of document(s), penalties were imposed by adjudicating officer under CA 2013/CA 1956 and no appeal was preferred by Defaulting Company or its officers before Regional Director under Section 454(6) of CA 2013 as on date of CFSS 2020, the following would apply:

- Where last date for filing for an appeal against order of adjudicating authority under Section 454(6) of CA 2013 falls between March 1, 2020 to May 31, 2020 (both days included), a period of 120 additional days is allowed with effect from such last date to all companies and their officers for filing an appeal before concerned Regional Directors
- During such additional period, prosecution under Section 454(8) of CA 2013 for non-compliance of order of adjudicating authority, insofar as it relates to delay associated in filing of any documents, statement of returns, etc. in the MCA-21 Registry, shall not be initiated against company or their officers
- **Benefit for inactive companies** – Defaulting Company that is inactive while filing due document(s) under CFSS 2020 may simultaneously either apply to get themselves declared as dormant company under Section 455 of CA 2013 by filing e-form MSC-1 at a normal fee on said form, or apply for striking off name of the company by filing e-Form STK-2 by paying fee payable on form STK-2.

Salient features of Scheme for relaxation of time for filing of forms related to creation and modification of charges under CA, 2013

- **Applicability** – Scheme is applicable to filing of Form No. CHG-1 (for creation, modification of charge other than those related to debentures) and Form No. CHG-9 (application for registration of creation or modification of charge for debentures or rectification of particulars filed in respect of creation or modification of charge for debentures) (**Form or Forms**) by a company or charge holder. However, Scheme is not applicable in cases where:
 - The form has already been filed before date of issue of Scheme
 - Timeline for filing form has already expired under Section 77 or 78 of CA 2013 prior to March 1, 2020
 - Timeline for filing form expires at a future date, despite exclusion of time as provided under Scheme
 - Filing of CHG-4 for satisfaction of charge
- **Relaxation in timelines**
 - Where charge creation/modification of charge is before March 1, 2020 but timeline for filing such form has not expired under section 77 of CA 2013, period beginning March 1, 2020 and ending on September 30, 2020 will not be reckoned for purpose of counting number of days. In case form is not filed within said period, first day after February 29, 2020 will be reckoned as October 1, 2020 for purpose of counting number of days within which the form is required to be filed.
 - Where charge creation/modification of charge falls on any date between March 1, 2020 and March 30, 2020 (both dates inclusive), period beginning from date of creation/modification of charge to September 30, 2020 shall not be reckoned for purpose of counting of days. In case form is not filed within such period, first day after date of creation/modification of charge shall be reckoned as October 1, 2020 for the purpose of counting the number of days within which the form is required to be filed..
- **Applicable fees in above-mentioned scenarios**
 - Where charge creation/modification of charge is before March 1, 2020 but timeline for filing such form has not expired under Section 77 of the CA 2013 and form is filed on or before September 30, 2020, fees payable as on February 29, 2020 under Companies Fee Rules, 2014 for said form shall be charged. However, if form is filed after September 30, 2020, applicable fees shall be charged under Companies Fee Rules, 2014 after adding number of days beginning from October 1, 2020 and ending on date of filing plus time period lapsed from date of the creation of charge till February 29, 2020
 - Where charge creation/modification of charge falls on any date between March 1, 2020 and March 30, 2020 (both dates inclusive) and form is filed before September 30, 2020, normal fees shall be payable under Companies Fee Rules, 2014. However, if form is filed thereafter, first day after date of creation/modification of charge shall be reckoned as October 1, 2020 and number of days till date of filing of form shall be counted for purposes of payment of fees under Companies Fee Rules, 2014.

Key aspects to consider while launching a start-up



Structuring the business

The first step towards launching a start-up is to structure the business and decide the type of vehicle which will be used to give it a legal identity. Various advantages and disadvantages need to be considered while choosing a structure which suits overall vision, goals, objective and purpose of the start-up.

This table summarizes the legal and regulatory requirements applicable to different structures:

Particular(s)	Private Limited Company	LLP	One Person Company	Partnership	Sole Proprietorship	Public Limited Company
Registration	Registration with ROC under Companies Act, 2013	Registration with ROC under LLP Act, 2008	Registration with ROC under Companies Act, 2013	Registration is optional	Registration is optional	Registration with ROC under Companies Act, 2013
Legal Status	Separate legal entity	Separate legal entity	Separate legal entity	No separate legal entity	No separate legal entity	Separate legal entity
Member liability	Limited liability to the extent of share capital	Limited liability to the extent of contribution towards the LLP	Limited liability to the extent of share capital	Unlimited liability	Unlimited liability	Limited liability to the extent of share capital
Min. v. Max. number of Shareholders	1-200	2-Unlimited	1	2-20	1	7-Unlimited
Foreign member	Allowed, but Govt. approval is needed in some cases	Need's Govt. approval	Not allowed	Allowed, but Govt. approval is needed in some cases	Not allowed	Allowed, but Govt. approval is needed in some cases
Transferability	Can be transferred	Can be transferred	Can be transferred	Not allowed	Not allowed	Can be transferred
Board meetings	To be held periodically	Not required to be held	Not allowed	Not allowed	Not required to be held	To be held periodically

Obtaining necessary licenses and registrations

The next step is to ensure all the necessary business licenses, approvals and certifications are obtained at the earliest. Businesses in India have a mandatory obligation to follow certain standards of operations and obtain necessary licenses/approvals to certify the same. Lack of relevant licenses can attract unwarranted penalties and other adverse consequences. Businesses may also consider opting for voluntary registrations such as registration under Micro, Small and Medium Enterprises (MSME) to avail benefits in taxation, credit facilities, loans, etc.

While the license requirement varies from industry to industry, some of the common registrations/licenses that are usually applicable to most businesses are:

- Shops and Establishments Act License
- Service Tax Registration
- Professional Tax
- GST Registration
- Udyog Aadhar registration
- Import Export Code

Register with Startup India

As an initiative to promote and encourage entrepreneurs, Government of India has launched the 'Startup India' initiative to recognize and promote start-ups. The initiative provides for various exceptions, concessions and other benefits to support start-up ecosystem in India, such as:

- Income tax exemption for a period of three years
- Tax exemption from capital gains and investments above fair market value
- Can complete a self-declaration (for nine labor laws) within one year from the date of incorporation and get an exemption from labor inspection for a period of five years from date of incorporation
- Provides high quality intellectual property services and resources to help start-ups protect and commercialize their IPRs and ensure that IP rights are secured and not infringed upon.

Raising funds

Financial investment is important for product development, manufacturing, expansion, sales and marketing, office spaces and inventory. Most start-ups follow the bootstrap model of funding initially and subsequently scout for funding alternatives such as crowd funding, seed funding, angel funding, venture capital funding, private equity funding. Government has been playing a proactive role to introduce capital funding for start-ups from institutional source and has enacted several legislations such as SEBI (Venture Capital Funds) Regulations, 1996 and SEBI (Alternative Investment Funds) Regulations in 2012 to create distinct asset class and permit fund investment strategies in secondary markets.

Contract management

As per Indian Contract Act, 1872, all agreements are contracts if they are made by free consent of parties who are competent to contract and are made for a lawful consideration with a lawful object and are not expressly declared to be void.

While it is a prudent practice to execute contracts in all transactions that require a legally binding effect, start-ups should seriously consider the following types of contracts:

- A co-founder's agreement between founders/promoters of the business – which usually contains details such as roles, responsibilities, duties, liabilities, operational details, exit clauses, etc. – can prove useful in case of downstream disputes
- Executing an employee contract with all the employees is an effective way for laying down the rights, obligations and duties of the start-up as well as the employee
- If the start-up raises investments from third party funding, it is important to execute a shareholders' agreement, share purchase agreement, share subscription agreement and any other relevant agreements in this regard, to provide clarity on the investment and delineate the rights, duties, obligations, warranties and other interests of the parties involved
- Non-Disclosure Agreements (**NDAs**) are vital, especially while discussing critical business information with people outside the organization such from potential investors and customers, which may expose the start-up to risks of unwarranted disclosure or use, resulting in theft of ideas and other intellectual property of the start-up

Ongoing compliances for start-ups

Entrepreneurs aspiring to launch start-ups in India must be mindful of the attendant legal and regulatory compliances. Some of the key compliance requirements (applicable to most start-ups) are:

■ Compliance under Companies Act, 2013

- **Annual General Meeting (AGM) and Board Meetings:** Every company must conduct at least one AGM every year, with a maximum gap of 15 months between two AGMs. AGMs' agenda must usually include approval of financial statements, appointment of auditors, appointment of directors, declaration of dividends, etc. Similarly, every company must hold a board meeting within 30 days of its incorporation. Further, four board meetings are supposed to be held every financial year such that gap between two consecutive board meetings isn't more than 120 days.
- **Appointment of Auditor:** The first Statutory Auditor must be appointed within 30 days of the company's incorporation, in the first board meeting held by the company. However, the subsequent auditors could be appointed for 5 years in AGM. It is mandatory to file form ADT-1 with the Registrar, containing details of the auditor who secures a 5-year appointment in the AGM.
- **File Annual Returns and Financial Statements:** Every company that is registered as a private limited company must file Form MGT-7, an electronic form issued by the Ministry of Corporate Affairs (MCA) for the purpose of filling annual returns every year. Similarly, every company that is registered as a private limited company must file Form AOC-4, an electronic form issued by the MCA for the purpose of filling company's financial statements every year.
- **Compliance for Directors:**
 - Firstly, Form MBP-1 needs to be filed by every director of the company in the first board meeting held by the company in every financial year, where they would disclose their interest in other entities, if any.
 - Secondly, every director of the company in every financial year must file Form DIR-8 with the Registrar for disclosure of non-disqualification of the director filing it.
 - Lastly, it is mandatory for every company to prepare a directors' report in which details of the state of affairs the company, company operation undertaken during the year, declaration of dividend, net profit, the status of its compliances under various provisions of the Companies Act, 2013 are contained.
- **Maintenance of Statutory Registers:** It is mandatory for companies to maintain the following:
 - Statutory Register
 - Board Meeting Minutes Book
 - General Meeting Minutes Book (i.e. AGM, EGM, Postal Ballot, Creditors Meetings, Debenture holders Meetings)
 - Books of Accounts/Financial Statements (Section 44aa)
 - Register of Directors Attendance at Board/Committee Meetings

■ GST compliance

- It is mandatory for start-ups to obtain a GST Registration to avail various benefits under GST Composition Scheme.
- Currently, the start-ups involved in supply of goods generating less than INR 40,00,000 in India (and INR 20,00,000 in the North Eastern States) are exempted from GST registration. Further, startups involved in the supply of services generating less than INR 20,00,000 in India (and INR 10,00,000 in the North Eastern States) are exempted from GST registration.

■ Income tax returns

- Income tax returns include the details of company's earnings, tax liable to be paid and tax paid, and any claims or refunds to be credited by the government. No company is exempt from filing income tax returns and it is mandatory to file income tax returns even when there is no income at all in a given financial year.
- A case of non-compliance can attract a penalty, prosecution, and investigation by IT Department.

■ Labor laws

- Compliances under labor laws are very broad and vary depending on type of start-up. Generally, labor laws require entities to comply with the Minimum Wages Act, Workmen's Compensation Act, Industrial Dispute Acts, etc.

It is pertinent for start-ups not to overlook and miss its compliance under the provisions of Sexual Harassment of Women at Workplace Act. It is mandatory for every company to form an Internal Complaints Committee under Section 4 of the Act, where women can register their complaints regarding Sexual harassment. Non-compliance can result in attract extreme penalties, including, fines, cancellation of the employer's license or withdrawal.

Pushback against the practice of filing criminal complaints to settle civil and contractual disputes



Last few years have witnessed a significant hike in number of frivolous criminal complaints being filed to settle civil disputes. In a majority of civil disputes which involve high stakes – such as family inheritance, partitions, property, will execution, fights between two companies or disputes resulting from a contract or an agreement between two parties – the most popular tendency is to lodge a criminal complaint against rivals in addition to filing of suits or initiation of arbitration proceedings and other civil remedies, primarily as a pressure tactic based on the notion that if a person is subjected to criminal prosecution, likelihood of a speedy settlement increases significantly.

A related trend is the increase in false criminal complaints filed against companies and its directors and founders for civil disputes arising out of the contracts entered into by the parties. This is often used as a ploy to compel a company and its directors abide by demands made by complainant or to suffer consequences of criminal proceedings initiated against them. This trend has been exacerbated by the lack of understanding on part of Police Authorities and Judiciary and has drawn flak from courts across India, including the Apex Court. On this note, a brief summary of key judgments passed by Supreme Court (SC) is set out below:

- In a recent judgement dated January 31, 2020 in matter of *Govind Prasad Kejriwal v. State of Bihar & Anr*¹, court observed that ‘It cannot be disputed that while holding the inquiry under Section 202 Criminal Procedure Code (CrPC), Magistrate is required to take a broad view and make sure a prima facie case is present. However, even while conducting/holding an inquiry under Section 202 CrPC, Magistrate is required to consider whether even a prima facie case is made out or not and whether criminal proceedings initiated are an abuse of process of law or Court or not and/or whether the dispute is purely of a civil nature or not and/or whether the civil dispute is tried to be given a colour of criminal dispute or not.’ Since, dispute between parties was purely of a civil nature, SC quashed the proceedings. Underlying principle observed by the court is that filing a criminal complaint to settle civil disputes is nothing but an abuse of process of law and Court.
- In another order August 08, 2019 in matter of *The Commissioner of Police & Ors v. Devender Anand & Ors*,² the Bench has observed that ‘Even considering nature of allegations in complaint, we are of firm opinion that no case is made out for taking cognizance of the offence under Section 420/34 IPC. The case involves a civil dispute and for settling a civil dispute, criminal complaint has been filed, which is nothing but an abuse of the process of law.’

¹ CRIMINAL APPEAL NO. 168 OF 2020

² CRIMINAL APPEAL NO. 834 of 2017, Supreme Court of India

- It is the duty of the Criminal Courts to ensure that proceeding initiated before it is not filed for settling scores or to pressurize parties to settle civil disputes. In cases of breach of contract, the appropriate forum to approach is the civil court. It has been observed in case of *Anand Kumar Mohatta & Anr. v. State (Govt. of NCT of Delhi)*³ that 'Essence of offence lay in use of property entrusted to a person by that person, in violation of any direction of law or any legal contract which he had made regarding discharge of such trust. In present case, amount of INR 1 crore was to be refunded to complainant simultaneously upon handing over of possession of constructed area as per agreement entered into by parties. It was alleged that Appellants had misappropriated amount or dishonestly used amount contrary to terms of contract. Court has held that the dispute had contours of a dispute of a civil nature and did not constitute a criminal offence. Further, court observed that prosecution's intent behind filing complaint is mala fide, untenable and solely intended to harass the Appellants. Complainant/Respondent have not made any attempt to recover deposit of INR 1 crore through a civil action except filing a criminal complaint. This action of theirs clearly put forth mala fide intent of complainant behind filing criminal complaint."
- In case of *Hridaya Ranjan Prasad Verma & Ors v. State of Bihar & Anr.*,⁴ SC has held that distinction between mere breach of contract and offence of cheating is a fine one. It depends upon intention of accused at time of inducement, which may be judged by his subsequent conduct. Mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction. Therefore, it is intention which is gist of offence. To hold a person guilty of cheating, it is necessary to show that he had fraudulent or dishonest intention at the time of making promise. From his mere failure to keep up promise such a culpable intention right at beginning cannot be presumed.
- *State of Haryana & ors v. Bhajan Lal & ors*⁵ established the fact that where a criminal proceeding is manifestly attended with mala fide intention and proceeding is maliciously instituted with object to serve oblique purpose of recovering amount, such proceeding needs to be quashed and set aside.
- In case of *Chandran Ratnaswami v. K.C. Palanisamy & ors*⁶ it was held that it would be unfair if applicants are to be tried in criminal proceeding arising out of alleged breach of a JV Agreement. It was further held that High Court has wholesome power under Section 482 of CrPC to quash a proceeding when it comes to conclusion that allowing proceeding to continue would be abuse of process of Court or ends of justice require proceedings to be quashed".
- In matter of *M/s Indian Oil Corporation v. M/s NEPC India Ltd & Ors*⁷ Apex Court held that a complainant who initiates or persists with a prosecution, being fully aware that the criminal proceedings are unwarranted and his remedy lies only in civil law, should himself be made accountable at the end of such misconceived criminal proceedings. Further, bench observed a growing tendency in business circles to convert purely civil disputes into criminal cases and the same need to be curbed.

Courts have time and again deprecated that the initiation of false criminal proceedings in cases having the elements of a civil dispute is an abuse of process of law and courts. The quick relief offered by a criminal prosecution as opposed to a civil dispute encourages litigant to initiate false and vexatious proceedings. Despite several warning and judgements passed by Apex Court against using criminal complaints as a weapon to settle civil disputes, little has changed on the ground. It is the duty of the counsels to help uphold the principles of natural justice and ensure that civil disputes given the colour of criminal offence should be quashed and the guilty must be held accountable for abusing the process of law.

³ CRIMINAL APPEAL No.1395 OF 2018 (Arising out of SLP (Cr) No. 3730 of 2016)

⁴ (2000) 4 SCC 168

⁵ 1992 Supp (1) SCC 335

⁶ (2013) 6 SCC 740

⁷ 2006 (3) SCC Cri 736

CCI approves acquisition of 9.99% stake in Jio Platforms by Jaadhu Holdings



Competition Commission of India (**CCI**) on June 24, 2020 approved Jaadhu Holdings LLC (**Jaadhu**) acquisition of 9.99% stake in Jio Platforms Ltd (**Jio Platforms**) (**Transaction**), digital arm of Reliance Industries Ltd (**RIL**). CCI's approval came about two months after the two companies signed the deal on April 22, 2020. A detailed order of CCI regarding this approval is expected to be released soon.

The deal

Pegged at USD 5.7 billion (INR 43,574 crore) this deal is the single largest FDI transaction in India and the largest investment for a minority stake in a technology company anywhere in the world.

The parties

Jaadhu is an indirect wholly owned subsidiary of Facebook, Inc. (**Facebook**), USA based social-networking giant. Jaadhu is a newly incorporated company formed in March 2020 under laws of State of Delaware, USA. As on date of Transaction, Jaadhu is not engaged in any business in India or anywhere in the world.

Facebook is a publicly traded company listed on NASDAQ⁸, with headquarters in California, USA. The Facebook group offers various products and services that help people connect to their friends and family, find communities, and grow businesses. Facebook primarily operates via three platforms: facebook.com, Instagram and WhatsApp.

Jio Platforms is a company organized and existing under laws of Republic of India, and a subsidiary of RIL. Jio Platforms owns (directly or indirectly) and operates digital applications and holds controlling investments in certain technology related entities. Jio Platforms also holds 100% of issued and outstanding share capital of Reliance JioInfocomm Ltd (**RJIL**), which is a public limited company incorporated in India, and is licensed telecommunications operator, providing telecommunications services to users across the country.

Summary of Combination

Notification form filed by parties under Regulation 13(1A) of CCI (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011 with CCI stipulates that Transaction is a minority, non-controlling share acquisition which falls under Section 5(a) of the Competition Act, 2020 (**Act**) and does not alter competitive landscape in any potential relevant market.

The purpose of the combination as stipulated in the Notification Form includes a separate commercial arrangement between Jio Platforms, WhatsApp Inc., and Reliance Retail Ltd (**RRL**) pursuant to which JioMart plans to integrate certain WhatsApp services with JioMart (**Proposed Commercial Arrangement**).

⁸ National Association of Securities Dealers Automated Quotations exchange

Parties also submitted that CCI need not define any relevant markets in this Transaction and without prejudice to arguments in Notification Form regarding market definition, parties have considered following two common segments to aid assessment of Transaction by CCI:

- Consumer Communication Applications
- Advertising Service

Accordingly, there is no significant horizontal overlap in either of these extremely dynamic segments, characterized by low entry barriers, ease of entry and switching, and a large number of competitors.

It was also submitted that the Transaction and Proposed Commercial Arrangement are pro-competitive, beneficial to consumers, 'Kirana' stores and other small and micro local Indian businesses and shall take forward the vision of Digital India.

Business and market impact

RJIL has emerged as India's largest telecom player with over 388 million subscribers within 3 years of its launch. Facebook has over 328 million users in India accessing its social network every month, while WhatsApp is present on over 400 million smartphones and is the most used messaging platform in the country⁹.

The two companies – RJIL and Facebook – are 'data elephants' in terms of controlling private data of Indians, and the combined reach of RJIL, Facebook and its messaging app WhatsApp would provide undue advantage against rivals, be it other technology giants like Google and Amazon or even local start-ups. The combined reach of the two companies will now include the following platforms¹⁰:

Industry	Platform
Social Media	Facebook, Instagram, WhatsApp, Jio Chat
Digital Payment Platforms	Jio Money, Facebook Libra, WhatsApp Pay
Entertainment	Jio Saavn, Jio Cinema, Jio TV, Facebook Watch
AR/VR	Jio Holoboard (Tesseract), Facebook Oculus
E-commerce	Ajio, Facebook Marketplace, WhatsApp for Business Accounts, Jio Mart
Other areas	Jio Phone, Jio Fibre

The Act viz-a-viz CCI's Approval

CCI, formulated under the Act, aims at encouraging competition and protecting Indian markets against anti-competitive practices. The Act prohibits anti-competitive agreements, abuse of dominant position and regulates combinations (M&As) with a view to ensuring that there is no adverse effect on competition in India. CCI's assessment primarily involves identifying any existing or potential overlaps between combining parties and examining effect of combination on ability of other players to effectively compete in India. Section 20 sub-section (4) of the Act lists factors that CCI must consider in order to conclude if there is any appreciable adverse effect on competition because of the proposed combination.

It is evident that both the companies have business ventures competing with each other viz.

- WhatsApp and Jio Chat
- Ajio and Facebook Marketplace
- Jio Pay and WhatsApp pay
- Jio TV and Facebook Watch

Therefore, combination of these companies may potentially destroy fair competition in at least some of verticals. Furthermore, RJIL plans to integrate JioMart and WhatsApp to integrate small and medium scale 'Kirana' businesses, which seems to be an attempt to penetrate into another market segment by using the dominance of WhatsApp.

While the detailed order in respect of CCI's approval for the Transaction is awaited, it will be interesting to further analyse the aspects examined by CCI in respect of granting approval for Jaadhu's acquisition of 9.99% stake in Jio Platforms.

⁹ Source: The Economic Times

¹⁰ Source: The Economic Times

Decriminalization of minor offences to improve ease of doing business

Taking a cue from decriminalization of certain provisions of the Companies Act, 2013 undertaken last year, the Government has come out with a list of minor offences under various legislations which is expected to go a long way in improving ease of doing business and helping unclog the court system. On June 8, 2020 and subsequently on June 12, 2020, Ministry of Finance, Government of India introduced two papers to invite comments from various stakeholders on decriminalization of certain offences pertaining to the following statutes:

- **Section 12 of Insurance Act, 1938 (read with Section 147 of the Companies Act, 2013):** Penalties applicable on an insurer for not auditing the balance sheet, profit and loss account, revenue account and profit and loss appropriation account as per the Companies Act, 2013
- **Section 103 of Insurance Act, 1938:** Penalty on a person carrying on the business of insurance without obtaining a certificate of registration under Section 3 of this Act
- **Section 29 of the SARFAESI Act, 2002:** Penalty for contravening, or attempting to contravene, or abetting the contravention, of any provisions of this Act or rules made thereunder
- **Section 16 (7) of Pension Fund Regulatory & Development Authority Act, 2013:** Penalties for failure to (i) produce any book, register, other document or record; (ii) furnish any information; (iii) appear before the investigating authority; or (iv) sign notes of any examination mentioned in Section 16(6) thereunder
- **Section 32 (1) of Pension Fund Regulatory & Development Authority Act, 2013:** Penalty for contravening, or attempting to contravene, or abetting the contravention of, any provisions of the act or rules made thereunder
- **Section 58B (1) of RBI Act, 1934:** Penalty for willfully making a statement which is false in any material particular knowing it to be false or willfully omitting to make a material statement in any application, declaration, return, statement, information or particulars made, required or furnished under the act, or any order, regulation or direction made or given thereunder or in any prospectus or advertisement issued for or in connection with the invitation by any person, of deposits of money from the public
- **Section 58B (4A) of RBI Act, 1934:** Penalty for contravention of the provisions of sub-section (1) of Section 45-IA (Requirement of registration and net owned fund) of this Act
- **Section 58B (5) of RBI Act, 1934:** Penalty if a person other than an auditor: (i) receives any deposit without being authorized so to do or in contravention of any direction given or order made under Chapter IIIB (provisions relating to non-banking institutions receiving deposits and financial Institutions); or (ii) fails to comply with any direction given or order made by the RBI under any of the provisions of Chapter IIIB (provisions relating to non-banking institutions receiving deposits and financial Institutions); or (iii) issues any prospectus or advertisement otherwise than in accordance with Section 45J (Bank to regulate or prohibit issue of prospectus or advertisement soliciting deposits of money) or any order made under Section 45 (Appointment of agents), as the case may be
- **Section 26 (1) of Payment and Settlement Systems Act, 2007:** Penalty for contravening the provisions of Section 4 (Payment system to not operate without authorization) or failing to comply with the terms and conditions subject to which the authorization has been issued under Section 7 (Issue or refusal of authorization)
- **Section 26 (4) of Payment and Settlement Systems Act, 2007:** Penalty for disclosing any information, the disclosure of which is prohibited under Section 22 (Duty to keep documents in the payment system confidential)
- **Section 56 (1) of NABARD Act, 1981:** Penalty for willfully making a statement which is false in any material particular knowing it to be false or willfully omitting to make a material statement in any return, balance-sheet, or other document or in any information required or furnished by or under or for the purposes of any provision of this Act
- **Section 49 of NHB Act, 1987:** Penalties for (i) willfully making a statement which is false in any material particular knowing it to be false or willfully omitting to make a material statement

in any return, balance-sheet, or other document or in any information required or furnished by or under or for the purposes of any provision of this act; (ii) failing to produce any book, account or other document, or to furnish any statement or information which, under the provisions of this act, it is his duty to produce or furnish; (iii) contravening the provisions of sub-section (1) of Section 29A of this act; (iv) failure by any auditor to comply with any direction given or order made by the National Housing Bank or the RBI under Section 33; (v) failure to comply with any order made by the National Company Law Tribunal; (vi) a person other than an auditor: (a) receiving any deposit without being authorized so to do or in contravention of any direction given or order made under Chapter V; or (b) failing to comply with any direction given or order made by the National Housing Bank or RBI under any of the provisions of Chapter V; or (c) issuing any prospectus or advertisement otherwise than in accordance with Section 35 or any order made under Section 30; (vi) contravention of any other provision therein

- **Section 42 (1) of State Financial Corporations Act, 1951:** Penalty for willfully making a false statement or knowingly permitting any false statement in any bill of lading, warehouse receipt or other document given to the Financial Corporation, whereby security is given or is purported to be given to the Financial Corporation for any accommodation granted by it under this Act
- **Section 42 (1) of State Financial Corporations Act, 1951:** Penalty for, without the consent in writing of the Financial Corporation, using the name of the Financial Corporation in any prospectus or advertisement
- **Section 23 (1) of Credit Information Companies (Regulation) Act, 2005:** Penalty for willfully making a statement which is false in any material particular or willfully omitting to make a material statement in any return or other document or in any information required or furnished by, or under, or for the purposes of, any provision of this Act
- **Section 23 of Factory Regulation Act, 2011:** Penalty for contravening, or attempting to contravene, or abetting the contravention of, any provisions of this Act or rules made thereunder
- **Section 37 of Actuaries Act, 2006:** Penalty for, (i) not being a member of the Institute, representing to be a member of the Institute, or using the designation Actuary, or using the letters AIAI or FIAI after name, or practicing the profession of an Actuary; or (ii) being a member of the Institute but not having a certificate of practice, representing to be in practice, or practicing as an Actuary
- **Section 46 of Banking Regulation Act, 1949:** Penalty for willfully making a statement which is false in any material particular or willfully omitting to make a material statement in any return or other document or in any information required or furnished by, or under, or for the purposes of, any provision of this Act
- **Section 30 of General Insurance Business (Nationalization) Act, 1972:** Penalty for willfully withholding or failing to deliver to an Indian insurance company any property or any books, documents or other papers which may be in his possession or unlawfully retains possession of any property of an existing insurer which has been transferred to and vested in an Indian insurance company or willfully applying any such property to purposes other than those expressed in or authorized by this Act
- **Section 40 of LIC Act, 1956:** Penalty for any person willfully withholding or failing to deliver to the LIC as required by Section 13 therein, any property or any books, documents or other papers which may be in his possession or unlawfully retains possession of any property of an insurer which has been transferred to and vested in the LIC under this act or willfully applying any such property to purposes other than those expressed in or authorized by this Act
- **Section 21 (1) of Banning of Unregulated Deposit Schemes Act, 2019:** Penalty for any deposit taker who solicits deposits in contravention of Section 3 therein
- **Section 21 (2) of Banning of Unregulated Deposit Schemes Act, 2019:** Penalty for any deposit taker accepting deposits in contravention of Section 3 therein
- **Section 21 (3) of Banning of Unregulated Deposit Schemes Act, 2019:** Penalty for any deposit taker accepting deposits in contravention of Section 3 therein and fraudulently defaulting in repayment of such deposits or in rendering any specified service
- **Section 22 of Banning of Unregulated Deposit Schemes Act, 2019:** Penalty for contravention of Section 4 therein
- **Section 23 of Banning of Unregulated Deposit Schemes Act, 2019:** Penalty for contravention of Section 5 therein

- **Section 24 of Banning of Unregulated Deposit Schemes Act, 2019:** Penalty for a person, having been previously convicted of an offence punishable under the chapter, except the offence under Section 26, subsequently getting convicted of an offence
- **Section 76 (1) of Chit Funds Act, 1982:** Penalty for contravention or abetment of contravention of the various Sections 4, 5, 8, 9, 11, 12, 13, 14, 19, 20, 22, 24, 30, 31, sub-Section (4) of section 33, Sections 46, 47 or sub-Section (5) of section 61 under this Act
- **Section 76 (3) of Chit Funds Act, 1982:** Making a statement in any document required to be filed under this act which is false in any material particular
- **Section 77 of Chit Funds Act, 1982:** Penalty for second conviction under sub-Section (1) or sub-Section (3) of Section 76
- **Section 47 (1) of DICGC Act, 1961:** Penalty for willfully making a statement which is false in any material particular or willfully omitting to make a material statement in any return or other document or in any information required or furnished by, or under, or for the purposes of, any provision of this Act
- **Section 138 of Negotiable Instruments Act, 1881:** Dishonor of any cheque because the amount of money standing to the credit of that account is insufficient to honor the cheque or that it exceeds the amount arranged to be paid from the account by an agreement made with the bank
- **Section 143 (1) of Negotiable Instruments Act, 1881:** Penalty for any conviction in a summary trial under this section
- **Section 4 of Prize Chits and Money Circulation Schemes (Banning) Act, 1978:** Penalty for contravention of Section 4 therein
- **Section 5 of Prize Chits and Money Circulation Schemes (Banning) Act, 1978:** Penalty for promotion or conduct of any prize chit or money circulation scheme in contravention of the provisions of this Act or participating in the provided manner in connection with any chit or scheme promoted or conducted as aforesaid
- **Section 12 (5) of Prize Chits and Money Circulation Schemes (Banning) Act, 1978:** Penalty for contravention of Section 12 (4) therein
- **Section 11C of Securities and Exchange Board of India Act, 1992:** Penalties for failure to (i) produce any book, register, other document or record; (ii) furnish any information; (iii) appear before the investigating authority; or (iv) sign notes of any examination mentioned in Section 11C(7) thereunder
- **Section 24 of Securities and Exchange Board of India Act, 1992:** Penalty for failure to pay the penalty imposed by the adjudicating officer or the SEBI or to comply with any of their directions or orders
- **Section 23 of The Securities Contract Regulation, Act, 1956:** Penalties for (i) failure to comply with any requisition made under sub-Section (4) of Section 6; (ii) entering into any contract in contravention of any of the provisions contained in Sections 13 or 16; (iii) owning or keeping a place other than that of a recognized stock exchange which is used for the purpose of entering into or performing any contracts in contravention of any of the provisions of this Act and knowingly permitting such place to be used for such purposes; (iv) not being a member of a recognized stock exchange or an agent authorized as such, willfully representing to or inducing any person to believe that contracts can be entered into or performed under this Act through him; (v) joining, gathering or assisting in gathering at any place other than the place of business specified in the byelaws of a recognized stock exchange, any person or persons for making bids or offers or for entering into or performing any contracts in contravention of any of the provisions of this Act
- **Section 23M of The Securities Contract Regulation, Act, 1956:** Failure to pay the penalty imposed by the adjudicating officer or SEBI or to comply with any of their directions or orders
- **Section 20 of The Depositories Act, 1996:** Penalty for failure to pay the penalty imposed by the adjudicating officer or the SEBI or to comply with any of their directions or orders

While on one hand it may be imperative to note that decriminalization of these offences may create a euphoria within the business community and the foreign investors, it is likely to have a negative impact on creditors who will have to wait longer to recover their legitimate dues as the intent of these laws were to create fear of being booked for failing to pay their contractual obligations.

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