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Table of contents

- Fresh guidelines for the social media intermediaries and OTT platforms
- Start Up India Seed Fund Scheme
- The Tribunals Reforms (Rationalization and Conditions of Service) Bill, 2021
- Government of India notifies UAE to qualify for FPI Category I Licence approved by Central Government
- Aligning regulatory restriction on share transfer
- RBI relaxes remittance rules for Indian individuals to invest in IFSCs
- The spectrum auction
- The CCI on the Google Meet – Gmail in-app interplay: An analysis of the order in the case of Baglkar Akash Kumar v. Google
- Impact of the budget on Infrastructure Investment Trusts and Real Estate Investment Trusts
- RBI tightens investment rules in NBFC from FATF non-compliant jurisdictions

Fresh guidelines for the social media intermediaries and OTT platforms

Amid growing concerns around the lack of transparency, accountability and rights of users related to digital media, the Government has introduced the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021 (**Rules**). These Rules have been framed in exercise of powers under Section 87(2) of the Information Technology Act, 2000. The Rules aim at empowering social media users and ensure that Social Media Intermediaries (**Intermediaries**) and Over-the-Top (**OTT**) platforms create a safe environment digitally.

Social Media Intermediaries will fall into two categories – an Intermediary and a Significant Social Media Intermediary. This distinction is based on the number of users on the social media platform, and the government will soon notify the threshold of the user base that will distinguish the two.

Key guidelines for Intermediaries

- **Applicabilty of 'safe harbor' provisions:** Intermediaries have to follow the prescribed diligence protocols to ensure applicability of 'safe harbour' provisions. In case these are not followed, the safe harbor provisions (defined under Section 79 of the IT Act, 2000) providing immunity from legal prosecution for any content posted on their platforms, will not apply to them.
- **Mandatory grievance redressal mechanism:** The Intermediaries shall appoint a Grievance Officer to deal with complaints and will share the name and contact details of such officers, who shall acknowledge the complaint within twenty four hours and resolve it within fifteen days from receipt.
- **Ensuring online safety and dignity of users:** Intermediaries shall remove or disable access within 24 hours of receipt of complaints of content that exposes the private areas of individuals, show such individuals in full or partial nudity or in sexual act or is in the nature of impersonation including morphed images etc. Such a complaint can be filed either by the individual or by any other person on his/her behalf.
- **Additional Due Diligences for the Significant Social Media Intermediaries:**
  - **Appointments:** The Significant Social Media Intermediaries need to appoint a Chief Compliance Officer, a Nodal Contact Person and a Resident Grievance Officer, all of whom should be residents of India.
  - **Compliance Report:** The Intermediaries need to publish a monthly compliance report mentioning the details of complaints received, action taken on the complaints as well as details of content removed proactively.
  - **Enabling identity of the Originator:** As per the guidelines, social media intermediaries providing services primarily in the nature of messaging shall enable identification of the first originator of the information.However, this is required only for the purposes of prevention, detection, investigation, prosecution or punishment of an offence related to sovereignty and integrity of India, the security of the State, friendly relations with foreign States, or public order as well as incitement to an offence relating to the above or in relation with rape, sexually explicit material or child sexual abuse material punishable with imprisonment for a term of not less than five years.
  - **Removal of unlawful information:** An Intermediary upon receiving actual knowledge in the form of an order by a court or being notified by the Government or its agencies through authorized officer should not host or publish any information which is prohibited under any law in relation to the interest of the sovereignty and integrity of India, public order, friendly relations with foreign countries etc.

Key guidelines for OTT platforms

- **Self-classification of content:** The OTT platforms shall self-classify the content into five age based categories- U (Universal), U/A 7+, U/A 13+, U/A 16+, and A (Adult)
- **Parental lock:** Platforms would be required to implement parental locks for content classified as U/A 13+ or higher, and reliable age verification mechanisms for content classified as 'A'
- **Display rating:** The OTTs shall prominently display the classification rating specific to each content or programme together with a content descriptor informing the user about the nature of the content, and advising on viewer description (if applicable) at the beginning of every programme enabling the user to make an informed decision, prior to watching the programme

Key guidelines for news publishers and digital media

- News publishers will be required to observe Norms of Journalistic Conduct of the Press Council of India and the Programme Code under the Cable Television Networks Regulation Act 1995, to ensure a level playing field between offline (Print, TV) and digital media
- **Grievance Redressal Mechanism:** A three-level grievance redressal mechanism has been established under the rules with different levels of self-regulation
  - **Level-I:** Self-regulation by the publishers;
  - **Level-II:** Self-regulation by the self-regulating bodies of the publishers;
  - **Level-III:** Oversight mechanism.
- **Self-regulation by the publisher:**
  - The publisher shall appoint a Grievance Redressal Officer based in India who shall be responsible for the redressal of grievances received within 15 days
- **Self-regulatory body:** There may be one or more self-regulatory bodies of publishers, which shall be headed by a retired judge of the Supreme Court, a High Court or an independent eminent person and have not more than six members; such a body will have to register with the Ministry of Information and Broadcasting and will oversee the adherence by the publisher to the Code of Ethics and address grievances that have not been resolved by the publisher within 15 days
- **Oversight mechanism:** The Ministry of Information and Broadcasting shall formulate an oversight mechanism and publish a charter for self-regulating bodies, including Codes of Practices, in addition to establish an Inter-Departmental Committee for hearing grievances

These Rules are an important step towards creating a safe space for consumers of digital media. On the flip side, there are concerns that the Rules give the Government stricter control over the content being provided online, which might lead to censorship. Additionally, it is unclear as to how OTT platforms are

expected to practically redress grievances from different users perspectives – some content is perceived as offensive by a certain section of public while being popular amongst another section. Despite these concerns, it is a laudable step by the Government and will help ensure cyber safety for consumers.

Startup India Seed Fund Scheme

The Startup India Seed Fund Scheme (**Scheme**) was announced about a month back, and is the Indian government's key initiatives to strengthen the startup eco-system at the grassroots level. It is expected to be implemented with effect from April 1, 2021. As the name itself suggests, it intends to create a growth environment at the seed funding level itself. Taking into account the country's entrepreneurial culture, this would be welcome by young companies who aspire to be future unicorns.

Key features of the Scheme

- **Intent:** The Scheme intends to not only provide seed funding to start ups but also to create an environment of growth, guidance and accountability. This factors in that while startups need funding, but they also need an eco-system where they are able to best use those funds for the proof of concept that they wish to cater to. Of course, it is well acknowledged under the Scheme that not all start ups would be successful.
- **Structure:** The Scheme is under the aegis of the Department for Promotion of Industry and Internal Trade (DPIIT), under the Central government's Ministry of Commerce and Industry. Instead of direct funding to start ups, it adopts an incubator model, whereby a panel of incubators receive funds and are responsible for meaningful and permitted disbursal to the selected start ups that are rostered with them. The Incubators themselves would also receive a management fee. The Scheme also intends to frame an expert advisory committee that would not only be in-charge of overall implementation and monitoring of the Scheme, but also selecting the eligible incubators for the Scheme through an open application system. This committee would have experts largely from government bodies and departments. The selected incubators would themselves form an incubator seed management committee, that would be responsible for selecting start ups from an open application system. This committee would be constituted through a mix of incubator representatives, government nominee, domain and industry experts, and successful entrepreneurs.
- **Corpus:** The Scheme contains some key conditions around drawdowns and fund utilisation at both incubator and start up levels, with a view to ensuring meaningful utilisation of finances. The overall size of the corpus is intended to be close to INR 95 million.
- **Eligibility:** The Scheme outlines detailed eligibility criteria for both start up applicants as well as incubator applicants. For startup applicants, special preference is intended to be given to certain sectors, such as education, agriculture, food processing, biotechnology and healthcare, among others. Among various important criteria for startups, a few that need mentioning are:
  - The startup has to not be more than 2 (two) years old at the time of application and recognised as a start up by the DPIIT
  - Indian promoter shareholding in the start up would have to be at least 51%
  - It would need a business idea for a product/service with market fit, viable commercialisation and scope of scaling up
  - Use of technology should be at its core

  As far as incubators are concerned, few of the notable criteria are:

  - The incubator does not have to be a company but could also be a society (registered under the Societies Registration Act), 1860; a trust (under the Indian Trusts Act, 1882) or even a statutory body created under an act of legislature, which should have been in existence for at least 2 (two) years at the time of applying
  - It should have the capacity to seat at least 25 (twenty five) people and at least 5 (five) start ups undergoing physical incubation at the time of application
  - It should have a full time chief executive officer experienced in business development and entrepreneurship with a capable team to mentor and support startups
  - It should be disbursing funds from any third party private entities.

In conclusion

On first blush, the size of the corpus and the tranches that an incubator or start up receives may not appear large. However, one must factor in that this could act as proof of concept for the DPIIT itself, allowing it to fine tune structures and models before it commits and deploys a larger corpus. On the positive side, the government committing to strengthening startups at seed level should make not just startups and incubators happy but also the private funding value chain, as it creates a wider pool of attractive startups (which have grown under mentorship and funding through a government set up) for them to invest into and take to the next level – starting at pre-series A level, right through to unicorn and decacorn stages.

The Tribunals Reforms (Rationalization and Conditions of Service) Bill, 2021

The Government of India has proposed the Tribunals Reforms (Rationalization and Conditions of Service) Bill, 2021 (**Bill**), to amend the Finance Act, 2017, in order to dissolve certain appellate bodies and transfer their functions (such as adjudication of appeals) to other existing judicial bodies.

In 2015, the Government started the process of streamlining existing Tribunals. Under the Finance Act, 2017, the Government merged or abolished 7 Tribunals with the existing Tribunals based on the type of the work performed by them, which led to a decrease in the number of Tribunals from 26 to 19. It also empowered the central government to notify rules on qualifications of members, terms and conditions of their service, and composition of a search-cum-selection committee for 19 Tribunals. The 2021 Bill further amends the Finance Act, 2017 to include provisions related to the composition of the search-cum-selection committee, and term of office of members in the Act itself.

The following are the key takeaways from the Bill:

- The Government proposes to abolish the following Tribunals:
  - Airport Appellate Tribunal that deals with matters under the Airports Authority of India Act, 1994 and The Control of National Highways (Land and Traffic) Act, 2002

- Authority for Advance Rulings under the Customs Act, 1962
- Intellectual Property Appellate Board (IPAB) which deals with all Intellectual Property Laws and,
- The Film Certification Appellate Authority under the Cinematograph Act, 1952

- Tenure of a Chairperson in Tribunals will be limited to four years or till the attainment of the age of seventy years, whichever is earlier. For other Members of the Tribunals, the term will be of four years or till the age of sixty-seven years, whichever is earlier.
- The Bill provides a mechanism for filing appeals directly to the Commercial Court or the High Court, as the case may be.
- A search-cum-selection committee has been proposed which will appoint the Chairperson and Members of the Tribunals. The Committee will consist of:
  - The Chief Justice of India, or a Supreme Court Judge nominated by him, as the Chairperson (with casting vote)
  - Two Secretaries nominated by the Central Government
  - The sitting or outgoing Chairperson, or a retired Supreme Court Judge, or a retired Chief Justice of a High Court
  - The Secretary of the Ministry under which the Tribunal is constituted (with no voting right)
- The Bill also includes the National Consumer Disputes Redressal Commission established under the Consumer Protection Act, 2019 within the purview of the Finance Act, 2017.

Tribunals were conceptualised to reduce the workload of Courts and provide a forum for expeditious decisions. Keeping this in mind, the Bill aims to abolish Tribunals which have minimal involvement in reducing any significant workload of Courts. An analysis of data pertaining to Tribunals in the last three years shows that Tribunals in several sectors have not led to faster justice delivery, and are also at a considerable expense to the exchequer. The Supreme Court too has often disapproved the practice of 'tribunalization' of justice in India. However, while this move saves costs, it may burden the already over stretched High Courts, and might result in delayed justice.

Government of India notifies UAE to qualify for FPI Category I Licence approved by Central Government

The Securities and Exchange Board of India (**SEBI**) under the Foreign Portfolio Investor Regulations, 2019 (**FPI Regulations**) had enhanced the scope of granting Category I Licence not only to entities from Financial Action Task Force (**FATF**) member Countries but also from any country specified by the Indian Government through an arrangement. Accordingly, the Government of India notifies United Arab Emirates (**UAE**) as an eligible country for the purpose of FPI Category I licence.

Under the FPI Regulations, following FPI applicants can obtain Category I licence:

- Appropriately regulated funds
- Unregulated funds whose Investment Manager is appropriately regulated and registered as a Category I FPI and
- University related endowment funds of universities in existence for more than 5 years

The applicant should be from the FATF member countries and not a resident in the country identified in the public statement of FATF as a jurisdiction having a strategic Anti-Money Laundering or Combating the Financing of Terrorism deficiencies to which counter measures apply or that has not made sufficient progress in addressing the deficiencies or has not committed to an action plan developed with the FATF to address the deficiencies ('non-cooperative' jurisdiction).

SEBI in order to broaden the scope of granting Category I licence to entities that are not part of the FATF Member Group Country had decided to amend the FPI Regulations to include, applicants from FATF *or from any country specified by the Indian Government by an order or by way of an agreement or treaty with other sovereign Governments* would qualify for FPI Category I licence. In line with this amendment, the Government of India issued a recent notification from the Department of Economic Affairs approving UAE as an eligible country for obtaining FPI Category I licence subject to applicable requirements. The expands the scope of FPI to permit applicants from non-FATF member group country contemplating an upgraded licence to access Indian capital markets only where the Indian Government has executed a specific arrangement with such country to promote investment activities. Interestingly, the step to notify UAE as an approved jurisdiction would grant the existing FPI Category I licence registered as FPI Category II for an upgrade through an application route.

Aligning regulatory restriction on share transfer

The discrepancy in the provisions of Guidelines for Tariff Based Competitive Bidding Process for Procurement of Power from Grid Connected Solar PV Power Projects issued on August 03, 2017 (**Bidding Guidelines**) and the Central Electricity Regulatory Commission (**CERC**) (Grant of Connectivity, Long-term Access and Medium-term Open Access in inter-State Transmission and related matters) Regulations, 2009 (**Connectivity Regulations**), in relation to the change of shareholding, have been a matter of concern.

The Bidding Guidelines entail a restriction on the parent company to maintain a minimum of 51% shareholding in the project linked special purpose vehicle (SPV) till 1 year after the Commercial Operation Date (**COD**). As a result, a parent can transfer up to 49% of its shareholding in the SPV within the lock-in period. On the other hand, the Connectivity Regulations restrict the transfer of connectivity and Long-Term Access (**LTA**) in entirety, with the only exception of transfer of connectivity from the parent company to a wholly owned subsidiary (and vice versa) after expiration of 1 year from COD[1]. Therefore, in case of Connectivity Regulations, the parent of the SPV cannot transfer any of its shares in the SPV till the connectivity is transferred to the SPV upon expiry of the lock-in period.

[1] Regulation 8A, Central Electricity Regulatory Commission (Grant of Connectivity, Long-term Access and Medium-term Open Access in inter-State Transmission and related matters) (Seventh Amendment) Regulations, 2019

It has been a long standing demand of the industry to make the provisions of the Connectivity Regulations and the Bidding Guidelines, in this regard, consistent. The Ministry of Power (**MoP**), acknowledging the need for such a change, has issued directions to the CERC on February 12, 2021 to align the inconsistency.

The Central Government is empowered to issue directions in policy matters involving public interest to the CERC[2] under Section 107 of the Electricity Act, 2003 (**Act**), as iterated under:

Section 107. (Directions by Central Government):

(1) In the discharge of its functions, the Central Commission shall be guided by such directions in matters of policy involving public interest as the Central Government may give to it in writing.

(2) If any question arises as to whether any such direction relates to a matter of policy involving public interest, the decision of the Central Government thereon shall be final.

Accordingly, the MoP has directed the CERC to amend the Connectivity Regulations to align the relevant provision under the Connectivity Regulations with the Bidding Guidelines. Once aligned, if a SPV is utilizing the connectivity granted to a parent company, the parent would still be allowed to part with up to 49% of its shareholding in the SPV during the lock-in period, being 1 year from the COD.

This is certainly a positive step. We can now expect the CERC to evaluate the direction and amend the Connectivity Regulations. In order to give effect to the same, CERC would issue draft amendments for stakeholder comments. Post receipt of comments, the amendments would be formalized and notified. Once the amendment has been notified, the mentioned change will be deemed to be implemented.

In what can be seen as a recent step to achieve the aim of enabling quicker clearance of deals by unclogging a major roadblock and fastening fund raising for renewable projects, the Central Government seems to have heard the calls of market players who were in requisition of the same.

RBI relaxes remittance rules for Indian individuals to invest in IFSCs

The Reserve Bank of India (**RBI**), in line with the Monetary Policy released earlier this month, had proposed to permit resident individuals to make remittances to International Financial Services Centres (**IFSCs**) established in India under the Liberalised Remittance Scheme (**LRS**). Accordingly, the RBI issued detailed guidelines to allow remittances for making investments in securities issued by the non-resident entities in IFSCs and open a non-interest-bearing Foreign Currency Account (**FCA**) in IFSCs for making investments under LRS.

RBI permits remittance of funds outside India for all resident individuals including minors under the Liberalised Remittance Scheme (**LRS**), to the extent of USD 0.25 million per financial year considered as free from capital control restrictions subject to satisfaction of conditions being revised in stages consistent with prevailing macro and micro economic scenarios. The resident individuals are not permitted to make remittances to the IFSCs under the LRS route. With the goals of expanding the financial markets in IFSC and providing an opportunity to resident individuals to diversify their portfolio, RBI has now decided to allow resident individuals to make remittances to IFSCs set up in India under the Special Economic Zone Act, 2005under the LRS route. Accordingly, the banks may allow resident individuals to make remittances under LRS to IFSCs subject to the prescribed conditions:

- Remittance to be made only for investments in IFSCs in securities except those issued by entities /companies resident (outside IFSC) in India
- Indian resident (outside IFSC) entering any transaction with a person/entity in IFSC is governed by regulations/directions and rules issued/notified by the RBI and Government of India
- Resident Individuals can open a non-interest-bearing Foreign Currency Account (FCA) in IFSCs, for making permissible investments under LRS
- Idle funds lying in the account for a period upto 15 days from the date of its receipt into the account to be immediately repatriated to domestic INR account of the investor in India
- Restriction to settle domestic transactions with other residents through these FCAs held in IFSC
- The Authorised Banks in allowing such remittances, to ensure compliance with all such terms and conditions, including reporting requirements prescribed under LRS

The amendment will permit eligible registered institutions in the IFSC to structure foreign currency products and sell them to the Indian individual investor. For the individual investor, the relaxation of LRS route permitted in IFSC structured products shall enlarge investment opportunity for an additional asset class in permissible securities and interest-bearing savings account subject to certain restrictions on withdrawals, term deposit, repayable at full on maturity and interest payable dependent on the performance of assets, indices or other economic values factors such like index or combination of indices, financial instrument or combination of financial instruments, commodity or combination of commodities or other physical assets, foreign exchange rate or combination of foreign exchange rates received by the bank for a fixed period.

The spectrum auction

The latest auction for the 4G telecom spectrum held on March 1, 2021, attracted bids worth INR 77,814 crore, which is around 18% more than the previous sale held in October 2016. Only three companies participated in the latest auction as compared to the 7 bidders in 2016. The spectrum bought and assigned will be valid for 20 years. It does not include frequencies in 3,300-3,600 Mhz bands that were identified for 5G services, which will happen later.

This year, Reliance Jio emerged as the highest bidder, acquiring 488.35 MHz for INR 57,122.65 crores followed by Bharti Airtel which took 355.45 MHz for INR 18,698.75 crores, and Vodafone Idea with 11.80 MHz for INR 1,993.40 crores.

The sale, however, fell short of the INR 3.92 lakh crores that the government could have generated had all airwaves on offer been sold at base price. However, the 700 MHz band that is worth nearly INR 2 lakh crores, went unsold due to its high base price despite a 43% cut from 2016 when it had also found no takers.

[2] In accordance with Section 2(9) of the Act, “Central Commission” refers to the Central Electricity Regulatory Commission.

Jio, Airtel and Vodafone Idea had submitted total earnest money deposits (**EMD**) of INR 13,475 crores for the spectrum auctions. The bidding indicates that telcos are willing to spend on increasing their spectrum holdings, which will help improve service quality and benefit consumers.

The CCI on the Google Meet – Gmail in-app interplay: An analysis of the order in the case of Baglkar Akash Kumar v. Google

Intending to presumably tap into a wider customer base, technology giant Google LLC had recently integrated its video conferencing counterpart, the Google Meet application, into the Gmail application. Subsequently, on September 22, 2020, information before the Competition Commission of India (**CCI**) was filed by Mr. Baglekar Akash Kumar (**Informant**) – a final year (Indian) law student in case number 39 of 2020 (**Information**) – raising allegations against Google LLC and Google India Digital Services Pvt Ltd (**Google**) alleging use of its dominant position in one relevant market to enter into other relevant markets and submitting that the same was a violation under the applicable provisions (namely Section 4(2)) of the (Indian) Competition Act, 2002 (**Act**). The Informant further went on to allege that owing to Google's dominant position in the 'email and direct messages' as well as 'internet-related services and products', Google's act of integration of Google Meet tab in Gmail amounts to leveraging its dominant position to enter into another market.

CCI's order

Basis the Information, the critical issue before the CCI was to determine whether Google was in a dominant position in the (relevant) market of 'internet-related products and services' and 'e-mailing and direct messaging'. Additionally, CCI as part of its order had further scrutinized whether the amalgamation of the Google Meet application into the Gmail application amounts to an abuse of its position under the applicable provisions under the Act. Noting the allegations in the instant case, the CCI adopted a three-legged approach to arrive at a decision, which has broadly been outlined as under:

- **The Locus Standi conundrum:** At the outset, CCI pursued Google's contentions surrounding the locus of the Informant in filing the instant information on September 22, 2020. Google had placed reliance on *Dr. L.H. Hiranandani Hospital v. CCI*[3] *and Samir Agarwal v. CCI*[4], to argue that the claim by the Informant was based on mere hypothesis and that the same amounts to claims with "oblique motives". Dismissing Google's contention, the CCI after placing reliance on the recent decision of the apex court in *Samir Agrawal v. CCI and Ors.*[5], noted that the proceedings before the CCI are inquisitorial and involve 'rights in rem'. As a result, taking note of the public interest, any member of the public can file an 'information' highlighting any anti-competitive behaviour by an entity.
- **Delineation Of Relevant Market:** For proving dominance, ascertainment of the appropriate relevant market is of paramount importance. While the Informant alleged Google's dominance in the relevant market of '*internet-related services and products*' as well as '*email and direct messaging*', Google contested the delineation of such relevant market by the Informant. Further, Google argued against its alleged dominance in the '*email and direct messaging*' market. The CCI, for the appropriate ascertainment of the relevant market, placed reliance on *Re: Harshita Chawla And WhatsApp Inc. & Ors.*[6], which considered various segmentations under the vast sector of internet-based consumer communication services, and accordingly appreciated the difference between various internet-based services. Further, the same order highlighted the importance of identification of "primary or most dominant feature(s) of an application" to infer the particular relevant market.

  CCI, while rejecting both the relevant markets proposed by the Informant, noted that 'email and direct messaging services' are distinct and as a result cannot be clubbed together. It further discussed that E-mail services like Gmail and Yahoo do not showcase 'network effects', i.e., a user of Gmail can send E-mails to another user registered with a different E-mail service provider, are mainly used for formal communications, do not possess in-built features like audio recording, etc. and are not linked to any particular mobile number for functionality. CCI further went on to state that direct messaging applications like WhatsApp and Telegram showcase 'network effects' and are mainly used for informal and personal communications, possess in-built features like audio recording and the likes and are linked to a particular mobile number for functionality. Concerning the relevant geographic market, the CCI zeroed in on the whole of India owing to the homogenous competition. The CCI for such reasons then observed that the appropriate primary market would be the '*market for providing email services in India'*.

  For the secondary market, CCI found Google's contentions of comparing Google Meet's functionalities with the ones provided by WhatsApp, Telegram, etc., erroneous. It observed that owing to differences in scale and functionalities (like the number of participants allowed) such a comparison cannot be accepted. An appropriate delineation of the secondary market would function within the realms of Google Meet, Cisco Webex and Zoom which allow a larger number of participants, thereby providing a wider utility and would essentially be limited to '*market for providing specialised video conferencing services in India'*.
- **The Question Of Abuse Of Dominance:** Section 4(2)(d) of the Act, prohibits one entity from concluding contracts subject to acceptance by other parties of supplementary obligations, which, by their nature or according to commercial usage, have no connection with the subject of such contracts while Section 4(2)(e) of the Act prohibits an entity from using its dominant position in one relevant market to enter into or protect, other relevant markets. Further, owing to a lack of substantial material for proving Google's dominance, CCI rejected the Informant's contentions alleging Google's dominance. However, CCI noted the following reasons for observing that there have been no contraventions on the part of Google regardless of its dominant position.
  - Gmail users are not coerced to use Google Meet for video conferencing. Regardless of the platform chosen, Google ensures the availability of all functionalities to all such users, thereby leaving the decision of using Google Meet to their 'free will'.
  - Google Meet can be accessed by anyone with a Google Account and the creation of the same is not limited to

[3] Appeal No. 19 of 2014
[4] Competition Appeal (AT) No. 11 of 2019
[5] Civil Appeal No. 3100 of 2020
[6] Case No. 15 of 2020

only Gmail users. Anyone with an email address may create a Google Account and shall be capable of accessing the same. Also, Google Meet is not just limited to Gmail as a supplementary addition but is also available independently.
  - Regarding the imposition of supplementary obligations under Section 4(2)(d), the same is not mandatory for Gmail users to use. The elements of choice and free will still lie with the users to either use Google Meet or any other video conferencing applications, regardless of incorporation of the Google Meet tab in Gmail.
- In line with the (broad) understanding provided above, CCI, on January 29, 2021, closed the Information owing to lack of merits and substance in the case.

In conclusion

The decision provides insight and provides clarity into CCI's adjudication of issues under Section 4(2)(e) of the Act. CCI in the present case has introduced certain other factors including 'coercion' and 'free will' to substantiate the background of the alleged violation. Moreover, the decision opens doors for market players to introduce supplementary modifications for their products, provided the factors discussed above are taken care of. In light of the same, it remains to be seen what course the jurisprudence of Section 4(2)(e) of the Act, in the coming years of the digital era will take.

Impact of the budget on Infrastructure Investment Trusts and Real Estate Investment Trusts

The 2021 Budget took some noteworthy steps in order to attract investors and guarantee continuous flow of funds for infrastructure and real estate sectors. The Hon'ble Finance Minister Ms. Nirmala Sithraman also made a proposition for exemption of taxes on dividends coming from Infrastructure Investment Trusts and Real Estate Investment Trusts. The budget seeks to permit the entry of FPIs into debt financing of these investment trusts.

InvITs

Infrastructure Investment Trusts (**InvITs**) are a type of trust that are required to be registered with Securities and Exchange Board of India (**SEBI**). After registering themselves with SEBI, they are allowed to raise capital through public or private placements and issue units of the particular investor. In lieu of their investment the investors receive a dividend and interest annually. InvITs are allowed to be listed prior to certain conditions like maintaining a leverage ratio of 49%, having AAA rating, making additional disclosure and compliances etc. However, non-listed InvITs are subject to relaxations by SEBI and they have a high level of flexibility.

Previously, banks and non-banking financial companies (**NBFCs**) were a major source of capital for infrastructure projects. Due to increased non-performing assets in the infrastructure sector has resulted in lower capital flow from the banks and NBFCs. Other sources of capital like insurance and pension funds also couldn't provide a continuous flow of capital due to regulatory and credit quality related constraints. The flow of capital in this sector had become an issue of real concern.

Significant steps taken to resolve the issue of capital flow

- **The government plans to permit debt financing on InvIT's:** InvIT is a relatively new investment instrument which comprises a portfolio of infrastructure assets. The basis for allowing debt financing by Foreign Portfolio Investors (**FPIs**) is to resolve the issue of lack of capital flow for infrastructure projects. Not only will this be a continuous source of capital for the growing infrastructure sector in the country but will also allow the FPIs to diversify their investment in India.
- **Tax relaxations:** The government also seeks to exempt tax deducted at source (**TDS**) on InvIT dividends. Relaxations have also been made with regard to advance tax. It is difficult to estimate the amount of dividend that an investor is likely to get, hence it has been proposed that advance tax liability on dividend would arise only after dividends are declared or paid to the respective investors. Further, for FPIs, it has been proposed to enable deduction of tax on dividend income at lower treaty rate.

REITs

Real estate investment trusts (**REITs**) work in a similar way to a mutual fund. Like a mutual fund, REITs generate money from individual investors, institutions or even companies. When this money is accumulated, REITs work towards investing in commercial properties like IT parks, hotels or office spaces and the wealth generated by these ventures is distributed back as dividends to the investors. There are three types of REITs:

- **Equity REIT:** Rental income is the main source of income
- **Mortgage REIT:** Capital generated is passed of as loan to institutions further investing in real estate and the income is mainly interest-based
- **Hybrid REIT:** This is a combination of both equity and mortgage REITs

In the Union Budget for 2021-22, Ms. Nirmala Sitharaman stated in the parliament that the government from this year, is allowing foreign portfolio investors to enter into debt financing of REITs.

Although a new investment instruments in the Indian markets, REITs have been a popular investment mechanism. The government has also promised suitable changes coming soon in the legislation of REITs for the entry of foreign portfolio investors. An increase in the marketability of REIT, should be achieved as there have been relaxation on the tax compliance for REIT investors in this budget. The key change made in the legislation is that only after the declaration or payment of the dividend has been made, the tax liability would arise. This is a welcome change as it will promote ease of doing business and quicker time to market for issuers and tax efficient trading for foreign investors across time zones with 22 hours non-stop trading.

In conclusion

The government is clearly trying to promote these types of investments, which will enhance the capability of both the infrastructure and real estate sectors to provide greater returns on investment in the long run.

RBI tightens investment rules in NBFC from FATF non-compliant jurisdictions

RBI issued guidelines for investors seeking foreign investment directly or indirectly in existing Non-Banking Financial Companies (**NBFCs**) or in companies seeking Certification of Registration (**CoR**) through non-compliant Financial Action Task Force (**FATF**) member Countries.

FATF periodically identifies jurisdictions having low measures to combat money laundering and terrorist financing (**AML/CFT**) referred in High-Risk Jurisdictions subject to a Call for Action and Jurisdictions under Increased Monitoring. A jurisdiction whose name does not appear in the prescribed FATF compliant list is referred to as a FATF compliant jurisdiction.

Further, being part of FATF member country, the investor shall not be a resident in the country identified in the public statement of FATF as a jurisdiction having a strategic Anti-Money Laundering or Combating the Financing of Terrorism deficiencies to which counter measures apply or that has not made sufficient progress in addressing the deficiencies or has not committed to an action plan developed with the FATF to address the deficiencies ('non-compliant' jurisdiction).

Investment in NBFCs from FATF non-compliant jurisdictions

Presently, foreign investment guidelines in India permits investment in the NBFC segment under the automatic route.

Investors in the existing NBFCs having investments prior to the classification of the source or intermediate jurisdiction/s as FATF non-compliant, may continue with the investments or bring in additional investments as per extant regulations to support continuity of business in India.

Investments in NBFCs from FATF non-compliant jurisdictions shall not be treated at par with that from the compliant jurisdictions. Hence, new investors from or through non-compliant FATF jurisdictions, whether in existing NBFCs or in entities seeking COR, are restricted to acquire directly or indirectly 'significant influence' in the investee, as defined in the applicable accounting standards and also specified in. Effectively, new investors (directly or indirectly) from such FATF non-compliant jurisdictions in aggregate should be less than the threshold of 20 per cent of the voting power (including potential voting power) of the NBFC.

In conclusion

In effect, such investment from the foreign jurisdictions that are FATF non-compliant seeking investment may be obligated to acquire substantial holdings only after seeking prior RBI approval. This seems to be in line with other FPI regulations, that does not permit non-FATF compliant jurisdiction to participate in the Indian capital markets. The tightening of the rules comes effectively with the renewed interest in the Indian NBFC sector that might be exposed to investment flow from prohibited countries from the FATF.

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