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EMERGENCY ARBITRATION- A DEVELOPING TREND AND ITS POSITION IN INDIA

Emergency Arbitration, in the semblance of an emergency relief, is an upcoming concept in the field of arbitration suitable for those who want to protect their assets and evidence that might otherwise be altered or lost. It is an interim emergency relief, which an aggrieved party can seek, before the constitution of an arbitral tribunal if the circumstances so warrant. The proceedings either domestic or international are conducted by an arbitrator as per the agreement between the parties or with the concurrence of the parties. Once the arbitral tribunal is constituted, the emergency award can be upheld, altered, revoked or extended by the tribunal.

The increase in international trade and investments globally means an upsurge in cross border commercial disputes as well. This results, in the arising need for an effective dispute resolution mechanism to encourage cross border business and to preserve business relationships. The concept of international arbitration has been considered as a cost-effective and time saving mechanism for speedy disposal of disputes. In international commercial arbitration proceedings, while the arbitral tribunal is being instituted, there arises among parties to the dispute, issues which necessitate immediate resolution. In such situations, the parties have the right to exercise the option to appoint an emergency arbitrator if the institutional rules permit. The emergency arbitrator is authorized to award urgent interim measures which is binding on the parties in a similar way that an arbitral award would be, till the time tribunal is formed.

The International Centre for Dispute Resolution (**ICDR**) introduced the provision for emergency relief in 2006. Under the ICDR provisions, a party can apply for emergency protective measures to safeguard its claim by writing to the administrator by specifying the particulars of the relief sought and the reasons and wherefores for its urgent need.

Position in India:

- With the enactment of the Arbitration and Conciliation Act, 1996 (the "**Act**") in India, laws relating to domestic arbitration, international commercial arbitration and enforcement of foreign awards were consolidated. Part II of the Act specifically deals with the enforcement of foreign arbitral awards, subject to certain conditions.

- To recognize emergency arbitrations, the Law Commission's 246th Report on amendments to the Act, proposed an amendment to Section 2(d) of the Act. This amendment was to ensure that institutional rules such as the Singapore International Arbitration Centre Rules, or International Chamber of Commerce Rules or any other rule which provide for an appointment of an emergency arbitrator are given statutory recognition in India:

  "Section 2(d): "*Arbitral tribunal" means a sole arbitrator or a panel of arbitrators and, in the case of an arbitration conducted under the rules of an institution providing for appointment of an emergency arbitrator, includes such emergency arbitrator.****"***

- It was expected that the Arbitration and Conciliation (Amendment) Act, 2015 would embrace this global turn of tide and create provisions for appointment of emergency arbitrator. For reasons unknown to the public, however, there is no statutory recognition of emergency arbitration under the present arbitration laws in India.

  However, a new move has emerged by way of which, arbitration institutions in India are trying to absorb the term "Emergency Arbitration" in their rules and are making simultaneous procedures thereof. As a result,

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currently in India Emergency Arbitration is provided by the following arbitral institutions:

- The Delhi International Arbitration Center (**DAC**), of the Delhi High Court in Part III of its Arbitration Rules includes "Emergency Arbitration". Further Section 18A explains the appointment, procedure, time period and powers of an Emergency Arbitrator.

- Court of Arbitration of the International Chambers of Commerce- India, under Article 29 of the 'Arbitration and ADR Rules' r/w Appendix V enumerate the provisions of Emergency Arbitration and Emergency Arbitrator.

- International Commercial Arbitration (ICA), under Section 33 r/w Section 36(3), enumerates the provisions of Emergency Arbitration and Emergency Arbitrator.

- Madras High Court Arbitration Center (MHCAC) Rules, 2014, under Part IV, Section 20 r/w Schedule A and Schedule D enumerate the provisions of Emergency Arbitration and Emergency Arbitrator.

- Mumbai Centre for International Arbitration (Rules) 2016, under Section 3 enumerates the provisions of Emergency Arbitration and Emergency Arbitrator.

Enforcement in India:

- Owing to the lack of statutory provision for emergency arbitration, the judicial decisions concerning emergency arbitration are scant. In the leading cases of *HSBC PI Holdings (Mauritius) Ltd.* v. *Avitel Post Studioz Ltd. & Ors.*[1] and *Raffles Design International India Private Limited & Ors. vs. Educomp Professional Education Limited & Ors.*[2], *2016*, the Bombay High Court and the Delhi High Court respectively, have emerged as the torch bearers wherein interim reliefs were granted by the Courts in sync with the order of the emergency arbitrator.

- These interim measures provided by the Court award the emergency relief sought for by the aggrieved party and encompass certain benefits because orders made under this section are immediately enforceable as orders of the Court unless they are altered or revoked by the tribunal after its constitution.

Conclusion:

- Emergency arbitration processes can provide an effective and rapid option for parties who require urgent relief. With the dynamically evolving legal discourse in India and arbitration evolving as a major method for dispute resolution, it is a matter of time that accelerated forms of arbitration are made a statutory reality in India as well.

- Although, Emergency Arbitration steps in as a turning tide for the global scenario in view of injunctions in arbitration proceedings, India still awaits a statutory recognition of the awards passed by an emergency arbitrator.

[1] Arbitration Petition No. 1062/2012 dated January 22nd, 2014.
[2] O.M.P (I) (Comm.) 23/2015, CCP(O) 59/2016 and IA Nos. 25949/2015, 2179/2016 dated October 7th, 2016.

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CRYPTOCURRENCIES AND ITS CHALLENGES WITH THE COMPETITION LAWS OF INDIA

Over the last few years, the term cryptocurrency has rapidly gained visibility in the public eye. In today's day and age, cryptocurrency is fast becoming essential to people who value privacy, and for whom the idea of using cryptography to control the creation and distribution of money does not sound too far-fetched. Cryptocurrency is peer-to-peer based platform wherein the scope of third party such as banks, central authority or government is eliminated, thus comprising of only two parties involved in the entire transaction, thus, acting as a decentralized network. Bitcoin is the largest and the most valued cryptocurrency in the world.

The principle conundrum with the world understanding cryptocurrency as a currency is due to the space in which it operates. Bitcoin operating as a digital currency in the cyberspace knows no bounds and hence is not restricted geographically or jurisdictionally.

The government of India has clearly stated its non-acceptance of regarding the cryptocurrency as a legal tender. However, it has agreed to explore use of block chain technology proactively for ushering in digital economy. The major issue with the government is cryptocurrency has colossal risks without any regulation and support.

Despite the precarious risks associated with the virtual currency, it has not lost its increasing popularity, compelling the authorities across nation to contemplate upon the need for its regulation. There is a growing need for adoption of a concrete regulatory policy regarding cryptocurrencies like Bitcoin in India. While framing such regulations, the competition law aspect cannot be left unheeded.

Challenges associated with the Competition Laws of India:

This segment takes into consideration the challenges that are posed by services concomitant with the cryptocurrency operations such as exchange and wallet services in the event of bitcoin and other cryptocurrencies becoming a legal tender in India.

- Predominant challenge is in the context of anti-competitive agreement wherein the possibilities of two kinds of agreement i.e. vertical and horizontal agreements exist. Horizontal agreements refer to those agreements that can lead to price fixation between two parties. An example of vertical agreements in such case would be an arrangement between marketing team of cryptocurrency and a provider of ancillary services such as exchange and wallet services. Since the market of cryptocurrency exchange service is limited, such agreements would adversely and immensely affect the competition in the relevant market, adversely affecting the consumers and the small players in the market.

- Working of exchange services may also take the form of predatory pricing. In the present scenario this could mean that the exchange service provider charges a fee below its cost price so as to eliminate competition in the market and then recover the same at a later stage by increasing its transaction fees.

- Also, after purchases of cryptocurrency from exchanges wallets are required to store such virtual currency. The abuse of dominant position could hold a vast scale here. An illustration to this maybe of a dominant exchange service provider offering discounts to customers who avail its associated wallet

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services as a result driving the exclusive wallet service providers out of market.

It is therefore suggested that any exchange that enters the market to trade for services in the cryptocurrency will have to necessarily be registered and notified by a governmental authority. This would also safeguard the investors interests in case of any crisis in the exchange service market triggered by reasons such as technical failures, bankruptcy etc.

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Insolvency and Bankruptcy Board of India amends Regulation 32 of IBBI (Liquidation Process) Regulation of 2016.

The Insolvency and Bankruptcy Board of India, *vide* its notification dates 27th March 2018 amended the IBBI (Liquidation Process) Regulation of 2016 by inserting the clause (c) to Regulation 32 namely, '*sell the corporate debtor as a going concern.*' This amendment will now permit the liquidator to sell the company without dissolving it in terms of Section 54 of the Insolvency and Bankruptcy Code, 2016. Further, the role of the NCLT as the adjudicating authority is made limited, the liquidator is made to be certain about deciding the alternative for liquidation.

[*Source:*http://ibbi.gov.in/webadmin/pdf/legalframwork/2018/Apr/IBBI%20(Liquidation%20Process)%20Amendment%20,%20%20Regulations%20%202018_2018-04-03%2018:24:02.pdf]

RBI Notifies the Foreign Exchange Management (Cross Border Merger) Regulation, 2018

The Reserve Bank of India, *vide* its notification dated 20th March 2018, finally notified the Foreign Exchange Management (Cross Border Merger) Regulation of 2018, in order to bring the regulations in sync with the recent amendments to Companies Act, 2013 which opened the gates for both inbound mergers and outbound mergers. Inclusion of the deemed prior approval of RBI on fulfilment of conditions of the regulations would be seen to expedite the process for all cross-border mergers and would facilitate the government's initiative of ease of doing business in India.

[*Source:* https://rbi.org.in/Scripts/NotificationUser.aspx?Id=11235&Mode=0]

Being Facebook 'friend' deemed sufficient for SEBI to allege 'connection' for Insider Trading.

The Securities and Exchange Board of India passed an interim order dated 16th April 2018 alleging that an insider can be by way of their association in any capacity including by way of frequent communication with its officers, which can also be in their social capacity as evident by frequent interactions, including on social media pointing out to Facebook activities. Further, SEBI on 4th February 2016, also passed an order wherein it was able to find the connection between the alleged people as they shared few mutual friends.

[*Source:* https://www.sebi.gov.in/enforcement/orders/apr-2018/order-in-the-matter-of-insider-trading-in-the-scrip-of-deep-industries-limited_38713.html]

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Discussion Paper of SEBI on the Disclosure Requirements of a Listed Corporate Entity undergoing Corporate Insolvency Resolution Process.

The Securities and Exchange Board of India on 28th March 2018 released a discussion paper dealing with eight major issues: (i) Disclosure Requirements; (ii) Material Related Party Transactions; (iii) Disposal of Shares in a Material Subsidiary; (iv) Dealing with Assets of Material Subsidiaries; (v) re-classification of promoters; (vi) Compliance with minimum Public Shareholding Requirement; (vii) Acquisition beyond maximum permissible Non-Public Shareholding and (viii) Delisting Pursuant to Resolution Plan/Liquidation. The essence of the proposed amendments is to ensure that the listed corporate entity provide certain information to the shareholders as there are no specific disclosure requirements under the SEBI (LODR) Regulation, 2015 for entities undergoing an insolvency process.

[*Source:* https://www.sebi.gov.in/reports/reports/mar-2018/discussion-paper-on-compliance-with-sebi-regulations-by-listed-entities-undergoing-corporate-insolvency-resolution-process-under-insolvency-and-bankruptcy-code-2016_38480.html]

Government Sets Foreign Capital Requirements for Unregulated Financial Entities

The Ministry of Finance on 16th April 2018 set foreign capital requirement limits for financial services entities which are not regulated by any financial regulator. The objective of the press release is clearly to declare upfront to all concerned, the "minimum FDI capital" required if a company is engaged in an activity that is "unregulated". Further, the press release made a distinction in the 'minimum FDI capital' between unregulated activity in terms of fund based (**FB**) and non-fund based (**NFB**) and places the requirement at US$ 20m and US$ 2m respectively (which translates to about Rs. 125 Crores and Rs. 12.5 crores respectively).

[*Source:*https://www.bloombergquint.com/markets/2018/04/16/government-sets-foreign-capital-requirements-for-unregulated-financial-entities]

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