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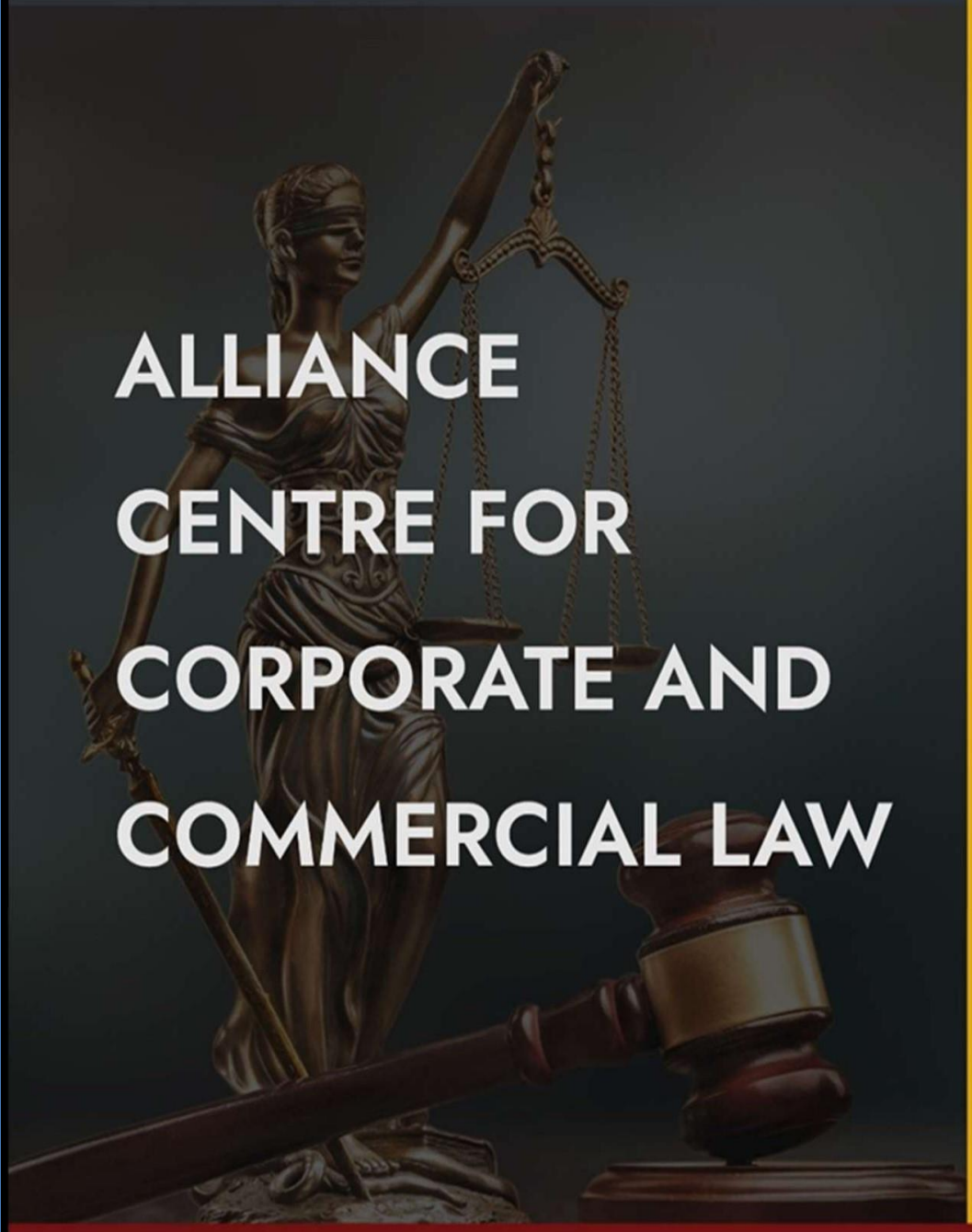
Alliance School of Law

ACL
ALLIANCE CENTRE FOR CORPORATE AND COMMERCIAL LAW

NEWSLETTER



ALLIANCE CENTRE FOR CORPORATE AND COMMERCIAL LAW

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MESSAGE FROM EDITOR-IN-CHIEF

Alliance School of Law takes pride in introducing Alliance Centre for Corporate and Commercial Laws (ACCL) Newsletter of Vol-3, Issue-1 on "Corporate and Commercial Law Updates", compiled and edited by Alliance Centre for Corporate and Commercial Laws- ACCL. The present newsletter is an effort to keep society informed about the developments in the relevant spheres of Corporate and Commercial laws. Alliance School of Law has been proactively involved in knowledge creation and dissemination. The ACCL has developed and developing creative forums and the coordinated efforts of the students and faculty members and will also bring the necessary connection and bonding. I am sure that the newsletter will become a must-read chronicle on happenings around us in the area of Corporate and Commercial Law. I congratulate the editorial team of faculty and students for their initiative and wish them success. Best Wishes to the Team ACCL.

Dr. V. Shyam Kishore

Interim Dean, Alliance School of Law

Alliance University, Bangalore

GUEST COLUMN

The world around us is ever evolving! Some of the issues that the legal system deals with today are something that were beyond our imagination a couple of years back. The magnitude and scale in which some of the technologies like machine learning, artificial intelligence, autonomous vehicles, unmanned aerial vehicle, virtual reality, 3D printing etc. developed in the recent past with advancement of data and computing powers, was unimaginable a few years back. Technology advancement in every sphere of life is so dynamic that it is always a challenge to catch up, forget being one step ahead!

Irrespective of the changes mentioned above, one constant fact that will continue to guide lawyers to solve issues for our clients and judiciary is that the legal foundation of all these problem statements remains the same! As lawyers, it is our skillset, developed through focused education and years of practice, that we can analyze any issue from the founding principles of laws and legal jurisprudence. While an Artificial Intelligence (AI) solution might sound 'techie' at the outset, as we start analyzing it from legal perspective, it splits into three pieces viz. data, software/algorithms and finally a product or service. To elaborate, any AI system needs tons of data and there are laws and principles governing data – be it personal or non-personal. Similarly, the outcome of an algorithm written by a set of engineers needs to be unbiased, accurate, explainable, ethical etc. and all these parameters are well governed under different statutes or legal principles. The legally, when an AI product is launched, it becomes yet another 'product' or a 'service' out in the market and legal ecosystem around the world is matured to handle the issues coming out of a product sold in the market. Yes, focused laws around AI would have helped to bring transparency and ease of understanding to the world; however, lawyers or judiciary will not be perplexed in the absence of any such specific statutes!

In our ever-evolving world, the terrain of legal challenges is constantly shifting, presenting us with issues that once seemed beyond the realm of possibility. Likewise, the tools and technologies employed by lawyers globally are continually advancing. The rapid development of technologies such as machine learning, artificial intelligence, autonomous vehicles, unmanned aerial vehicles, virtual reality, and 3D printing, fueled by the relentless march of data and computing power, has surpassed even our wildest imaginations of just a few years ago. The dynamism of technological advancement permeates every facet of our lives, presenting a perpetual challenge to keep pace, let alone forge ahead.

Thaj Mathew

Vice President and General Counsel, Honeywell

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COMPULSORILY CONVERTIBLE DEBENTURES: DEBT OR EQUITY

- Mr. Dipendra Singh Tomar[1]

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In a dispute that arose between two financial institutions, IFCI and IVRCL Chengapalli Tollways Limited (ICTL)[2], the Supreme Court sought to clarify whether compulsorily convertible securities fall into the category of debt or equity for the purposes of Insolvency and Bankruptcy Code, 2016[3]. This question must be answered as when a company goes into insolvency before the date of conversion, the resolution professional has to deal with the dilemma of whether the holders of compulsorily convertible debentures are to be treated as a financial debtor of the company or its member in the capacity of its shareholder.

The facts of the case are such that a concession agreement was entered between ICTL and NHAI[4] and for the purpose of the project involved in this case. IVRCL Ltd was made the parent company of ICTL and ICTL was its wholly owned subsidiary. Now for the purpose of financing this particular project, some lenders granted a term loan to ICTL. IVRCL was also to finance this project by equity infusion and the compulsorily convertible debentures were a part of it. Now, IFCI Ltd. invested in these compulsorily convertible debentures.

Subsequently, ICTL became insolvent, and thus, IFCI held compulsorily convertible debentures could not be converted into equity on the date of its maturity. IFCI argued that it was left with no remedy and that its investment should come into the category of debt and should be considered in the category of financial creditors. Both NCLT and NCLAT passed judgment against IFCI.

When the matter went before the Supreme Court, it went back to its previously decided case[5] where the 'Repayment of principle' test was laid. When talking about optionally fully convertible debentures, the option is available to its holders to choose between conversion of their security into equity or having their principal amount repaid on maturity. Thus, they are considered debt and not equity. However, this is not the case when we talk compulsorily convertible debentures.

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[1] 4th year B.A. LL. B. *(Hons.)* Student, Alliance School of Law, Alliance University
[2] M/s. IFCI Limited v. Sutanu Sinha & Ors. (Civil Appeal No. 4929/2023)
[3] Insolvency and Bankruptcy Code, 2016
[4] National Highways Authority of India
[5] Naresh Kumar Maheshwari v. Union of India (1989) AIR 2138

In the instant case, the Apex Court held that if the principal amount has not been paid to the holders of compulsorily convertible debentures, then at the time of insolvency, the security has to be considered debt. However, on the other hand, if the principal amount has been repaid, then the security is to be considered as equity. In this case, the Supreme Court said that the term 'Debt'[6] under the IBC, 2016 means any liability in respect of a claim and here, the appellant IFCI is an equity holder because it has been clearly stated in the subscription agreement that if there is failure in buyback of shares within a particular time frame, then there will be automatic conversion of debentures into equity. Thus, the company does not owe any money to the appellant.

On the careful examination of the judgment, it could be observed that whether a particular security is to be considered a debt or equity depends upon the circumstances of each case, and when hybrid securities like compulsorily convertible debentures come into question, it has to be interpreted contextually. The Court in this case emphasized the fact that when the question of commercial contracts arises, its interpretation requires careful examination of the complexities of the business transactions.

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Quick Note: Hybrid Securities are to be interpreted contextually

[6] The Insolvency and Bankruptcy Code, 2016, No. 31, Section 3 (11), Acts of Parliament, 2016 (India)

PAYTM PAYMENTS BANK FACES FURTHER RESTRICTIONS: NEW CUSTOMER ONBOARDING STOPPED; MOST TRANSACTIONS BLOCKED FROM MARCH 1ST.

- Mr. Pranav Agrawal[7]

In a significant escalation of its actions against Paytm Payments Bank (PPBL), the Reserve Bank of India (RBI) has imposed further restrictions on the bank's operations. Effective March 1st, 2024, PPBL will be prohibited from onboarding new customers, processing most transactions, and even accepting deposits.

This follows an earlier directive issued in March 2022 where RBI had already stopped PPBL from onboarding new customers. However, recent audits revealed "persistent non-compliances and continued material supervisory concerns" prompting the central bank to take stricter action.

Key restrictions imposed by RBI:

- No new customer to onboard: PPBL cannot onboard new customers with immediate effect.
- Limited transactions: From March 1st, the bank can only process withdrawals and utilize balances by existing customers. No deposits, credit transactions, top-ups, or other banking services like fund transfers, IMPS, UPI, etc. will be allowed.
- Nodal account termination: Nodal accounts of One97 Communications Ltd (Paytm's parent company) and Paytm Payments Services Ltd will be terminated by February 29th.[8]
- Transaction settlement deadline: All ongoing transactions and nodal account settlements must be completed by March 15th.

Reasons for RBI's action:

The RBI has cited non-compliance with various regulations as the reason for its actions. These include:

- Know Your Customer (KYC) norms: Failing to identify beneficial owners of entities providing payout services and not monitoring payout transactions. Paytm Payments Bank is facing strict action from RBI due to hundreds of accounts created without proper KYC. Over 1000 users linked the same PAN to their accounts, raising

[7] 4th year B.B.A. LL.B. *(Hons.)* Student, Alliance School of Law, Alliance University

[8] Sheeresh Kapoor *RBI bans Paytm Payment Bank from onboarding customers due to non-compliance issue* BSFI BY ECONOMIC TIMES (Feb 5, 2024 8:30pm) https://bfsi.economictimes.indiatimes.com/news/policy/rbi-bans-paytm-payment-bank-from-onboarding-customers-due-to-non-compliance-issues/107297899

concerns about money laundering. Both RBI and auditors found discrepancies in compliance reports, leading to worries that these accounts could be used for illegal activities. The issue has been escalated to Enforcement Directorate, Ministry of Home Affairs and even Prime Minister's office.[9]

- Cybersecurity lapses: Reporting a cyber incident with delay and failing to implement certain security measures.
- Breaching regulatory limits: Exceeding the permitted balance in certain customer accounts.

Impact on Paytm and its customers:

This move by RBI will significantly impact Paytm's operations and its 64 million customers. Existing customers will only be able to withdraw existing funds and will not be able to make new deposits, top-ups, or transact using the platform after March 1st.

Paytm's response:

Paytm has issued a statement stating it is "fully cooperating with the RBI and will take all necessary steps to comply with the directives." The company is also exploring legal options to challenge the RBI's actions.

Experts' views:

Financial experts express mixed reactions to the RBI's decision. While some acknowledge the need for regulatory compliance, others raise concerns about the potential impact on financial inclusion and competition in the digital payments space.

The future of Paytm Payments Bank:

The RBI's actions raise questions about the future of PPBL. The bank's ability to operate effectively and comply with regulations will be crucial in determining its future course. This situation is still unfolding, and it remains to be seen how Paytm will navigate these challenges and what the long-term implications will be for its payments bank business.

Quick Note: The failure of Paytm Payments Bank is a clear depiction there unawareness towards the market forces

[9] Abhimanyu Kulkarni *1,000 Accounts, 1 PAN: How Paytm Payments Bank Came Under RBI's Radar* NDTV INDIA (Feb 5, 2024 8:30pm) https://www.ndtv.com/business-news/1000-accounts-1-pan-money-laundering-how-paytm-payments-bank-came-under-rbi-radar-4990243

AI IN CONTRACTS: AN INVISIBLE HANDSHAKE

- Mr. Ansh Kanaujia[10]

We seal agreements by shaking hands. But what if that handshake involves an algorithm? AI is revolutionizing contracts, promising efficiency and streamlining processes. While AI promises efficiency and automation, a lurking specter looms large, the algorithmic bias. AI in contracts is just a match made in silicon. AI finds diverse applications in contract management, from automated drafting and review to the risk assessment and negotiation support, like just imagine, AI powered chat bots are negotiating the standardized contracts thereby relieving the lawyers for complex matters and machine learning algorithms analyze the vast data sets to identify the potential risks and clauses which are beneficial to each party etc. where these possibilities are enticing which promises faster turnaround times and increased accuracy[11]. However, beneath this sheen lies the potential for bias, like a hidden clause in the fine print.

Imagine automated contract drafting robots, algorithms analyzing risks in second, yes, it is true that AI promises faster turnaround times, increased accuracy and reduced costs. The journey had evolved from paperwork to AI-powered pipelines. From standardized agreements to complex negotiations, AI's applications are diverse which helps in relieving lawyers for strategic tasks by handling routine contract drafting, helping to identify the potential risks through machine learning and simplifying language by using Natural Language Processing thereby making contracts easier to navigate and understand. These possibilities are exciting, but remember, the technology isn't infallible, just like a prejudiced handshake, and AI can be tainted by hidden biases[12].

Where the Algorithm's shadow comes in is where the bias creeps in. Algorithmic bias which is rooted in the data which is used to train AI models can manifest in several ways which includes Historical bias where if the training data reflects historical disparities, then AI may perpetuate discriminatory terms or favor certain parties[13]; Omission bias where the relevant

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[10] 4th year B.B.A. LL.B *(Hons.)* Student, Alliance School of Law, Alliance University
[11] Richard Susskind, Tomorrow's Lawyers: An Introduction to Your Future (3rd Ed. 2023).
[12] Cathy O' Neil, Weapons Of Math Destruction: How Big Data Increases Inequality And Threatens Democracy (Crown, 2016).
[13] Joy Buolamwini & Timnit Gebru, Gender Shades: Intersectional Accuracy Disparities In Commercial Gender Classification (Sorelle A. Friedler And Christo Wilson) (2018).

data is excluded from the training which may lead to incomplete assessments thereby becoming disadvantageous etc. This erodes trust and lack of transparency in AI decisions and undermines the integrity of contracts.

We can't simply sign contracts with this problem. Addressing algorithmic bias requires a multi-pronged approach such as Data Detox which scrutinizes the training data for biasness and ensures diversity; maintaining human oversight in taking the critical decisions and explaining the AI's logic for better understating and gaining trust; regularly monitoring for the bias and encouraging feedback to refine the AI models in order to decrease the discriminatory outcomes and to develop regulations governing the AI in contracts to govern the standards for fairness and accountability.

The future of handshakes of AI in contracts is not just about efficiency, it's all about the fairness and equity. By addressing the issue of algorithmic bias, we can ensure that AI becomes a good force and not a tool of inequality. Remember, the future of contracts is being written today. Let's shake hands with AI, but only if it's a handshake of trust, transparency, and fairness for all. AI in contracts offers immense potential, but only when the challenges are addressed. Only then can AI become a truly transformative force in contracting, transparency, fostering trust and equitable outcomes for all.

Quick Note: AI offers efficiency in contracts but fairness requires addressing algorithmic bias through data cleaning, human oversight, and regulations.

SPACTACULAR GROWTH: UNDERSTANDING THE LEGAL LANDSCAPE OF SPECIAL PURPOSE ACQUISITION COMPANIES

- Ms. Meghana Chowdary Dasari[14]

SPACs, or Special Purpose Acquisition Companies, have taken the M&A world by storm, offering businesses a faster and potentially more lucrative path to going public. Imagine a company with no operations, no products, just a whole lot of cash and a dream. That's essentially considered a SPAC which raises money through an IPO (Initial Public Offering) and then goes on a hunt for an established private company to merge with. SPAC is a publicly traded company created for the purpose of acquiring or merging with an existing company[15]. However, this fast-paced environment comes with intricate legal complexities that both businesses and investors must navigate carefully. Merging a SPAC with a target company, known as "de-SPACing," involves intricate legal steps and tight timelines.

Hold on, as we are taking a deep dive into the key legal areas of SPACs before understanding it's pitfalls, where the first thing which rings the bell for any kind of company is to comply with the concerned legal regulations, which for SPAC is the SEC Regulations which includes de-SPACing timelines etc. Next are the disclosure requirements and the litigation risks posed for the SPACs where they must ensure utmost transparency in disclosing towards their investors regarding potential targets, financial projections, and associated risks. De-SPACing involves a complex legal maze with tight timelines. And SPAC sponsors have a fiduciary duty to the investors which require them to act investor's best interests[16].

The sudden craze for the SPACs is due to the speed as it can reach much faster into the public when compared with the lengthy IPO processes. SPACs also attract a wider range of investors offering them potentially higher returns. Hold on, as with the rise in SPACs, the opportunities also did rise like the increase surge in legal work across various practice areas such as corporate law, securities law, regulatory compliance and litigation which create which business opportunities for the upcoming lawyers[17].

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[14] 4th year B.B.A. LL.B. *(Hons.)* Student, Alliance School of Law, Alliance University

[15] Max H. Bazerman & Paresh Patel, SPACs: What You Need to Know, HARV. BUS. REV., Jul. - Aug. 2021.

[16] FRANZ GUSTAV OERTEL, CAPITAL FOR CHAMPIONS: SPACs AS A DRIVER OF INNOVATION AND GROWTH (Books on Demand, 2022).

[17] MARIA LUCIA PASSADOR, IN VOGUE AGAIN: THE (RE)RISE OF SPACs IN THE IPO MARKET (Harvard Law School, 2021).

As we know, nothing comes without challenges, SPACs attract increased scrutiny from the regulators due to concerns about investor protection, disclosure practices and potential conflicts of interest which led to a stricter regulatory environment requiring lawyers to navigate complex compliance requirements and potential investigations. The inherent nature of SPACs with their uncertain target acquisitions presents legal risks and uncertainties for all parties concerned. The SPAC landscape is ever evolving. Analyzing the potential impacts is crucial for SPAC as to which kind of industries attract to SPAC and their reasons, potential regulatory changes and market sentiment and also the impact of SPACs on traditional M&A practices.

Finally, as the SPAC wave continues to crest, offering a potentially groundbreaking avenue for businesses and investors, venturing into this exhilarating environment demands responsible navigation of the intricate legal landscape that underpins its success. Staying informed about evolving regulations, industry trends and legal precedents can make informed decisions and navigate the challenges and opportunities presented by SPACs. The future of SPACs only the time can tell as SPACs have demonstrably shaken up the traditional IPO landscape and their innovative approach could leave a lasting impact. In the world of SPACs, the only change constant is change.

Quick Note: SPACs offer a faster IPO alternative but come with complex legal regulations, disclosure requirements and potential litigation risks.

RESERVE BANK OF INDIA'S ACTION ON PAYTM PAYMENTS BANK LIMITED

- Mr. Gaurav Jonnagadla[18]

The Reserve Bank of India ("RBI") has imposed stringent measures against the Paytm Payments Bank Ltd ("PPBL") and its parent company, One97 Communications Ltd ("OCL"), due to concerns over money laundering issues and suspicion of dubious financial transactions involving over several crores of rupees.

Investigations have unraveled several irregularities, including the presence of numerous non-KYC ("Know Your Customer") compliant accounts and instances where single KYC was used for multiple account openings. This has led to the presence of the same PAN number for multiple accounts.

The RBI has directed PPBL to cease accepting deposits, conducting credit transactions, and carrying out top-ups on customer accounts, prepaid instruments, wallets, and cards for paying road tolls after February 29. The account holders will still be permitted to access their existing deposits and use it to pay for services with the money stored in their wallets till February 29.

According to an analyst, PPBL has in existence of about 35 crore e-wallets, out of which an estimate of about 31 crore wallets were dormant while only about 4 crore wallets were to be operative with either no balance or a minimal amount of balance. Typically, an abnormally huge number of dormant accounts are inclined to have been used as mule accounts. These irregularities in KYC would expose the genuine customers and depositors including the wallet holders to serious problems and risk.

Despite earlier warnings and supervisory restrictions from RBI, compliance issues persisted as those submitted by PPBL were found to be incomplete and false on many occasions, leading to additional restrictions and a mandate for a comprehensive system audit. Accordingly, in March 2022, RBI imposed supervisory restriction on PPBL, halting the on-boarding of new customers and mandating with immediate effect to appoint an external audit

[18] 4th year B.B.A. LL.B. *(Hons.)* Student, Alliance School of Law, Alliance University

firm to conduct a thorough system audit due to concerns of digital fraud and scams. There are several instances where the wallets and accounts of the customers have been frozen by various law enforcement agencies, as such accounts were being found used for committing digital frauds and scams.

In September 2022, the Enforcement Directorate ("ED") conducted raids at the premises of PPBL and its parent company along with other payment aggregators, following the reports of debtors resorting to extreme measures by ending their lives. This has triggered the ED to initiate a probe under the criminal provisions of the Prevention of Money Laundering Act ("PMLA"). Allegations surfaced that the illegal digital loan companies had obtained the personal data of the borrowers upon the installation of apps, leading to tragic outcomes.

Following the RBI's direction, the shares of PAYTM (Owned by One97 Communications Limited), slumped 50 per cent in the last three days, after hitting the lower circuit continuously three times in a row. The stock price reduced to Rs. 438.50, its lowest trading permissible limit for the day, on the NSE on Monday (February 5).

Quick Note: The Reserve Bank of India is considering canceling the operating license of Paytm Payments Bank as early as next month once all the depositors are safeguarded.

INSTITUTIONALISING PUBLIC CONSULTATIONS: A STEP TOWARDS BUILDING A STAKEHOLDER-FRIENDLY REGULATORY THRESHOLD

- Ms. Aayushi Bhatti[19]

Effective January 1, 2024, the Ministry of Corporate Affairs ("MCA") announced a "Draft Policy for Pre-Legislative consultation and comprehensive review of existing Rules and Regulations" (the "MCA-PLCP"). This action will assist in addressing the inherent non-uniformity in the consultative methods and processes used by various MCA-formed/governed regulatory bodies, and it supports the increased focus on enhancing the "ease of doing business" across regulators in India. The MCA has acknowledged that stakeholder involvement in co-creating the regulatory framework that will regulate them can be increased and transparency fostered through public consultations.

It is expected that these tools will detect technical non-compliances more than substantive non-compliances given the heightened regulatory scrutiny, to the point that authorities have even begun using cutting-edge technology and AI techniques to find non-compliances. When the Legislative Department of the Ministry of Law and Justice released a letter on February 5, 2014, describing the pre-legislative policy ("PLCP") and highlighting the significance of pre-legislative consultations for all government departments and ministries before introducing any amendments to the existing legal and regulatory regime, the idea of pre-legislative consultation gained institutional push and recognition. A bold step towards constructing a more robust and engaged democracy was the PLCP. The PLCP, which gave the appropriate government agencies and ministries considerable discretionary powers, was undoubtedly a step in the right direction, but its execution lacked consistency and enforceability.

The MCA has taken the lead in institutionalizing the PLCP after nearly ten years, maybe motivated by the outcomes of earlier discussions. If we talk about the Applicability and Enforceability of MCA-PLCP then the MCA-PLCP would be applicable to the MCA and the laws that it oversees, such as the Competition Act of 2002, the Companies Act of 2013, the Limited Liability Partnership Act of 2008, the Insolvency and Bankruptcy Code of 2016, and others. Regulatory agencies like the National Financial Reporting Authority (NFRA), the

[19] 4th year B.B.A. LL.B. *(Hons.)* Student, Alliance School of Law, Alliance University

Competition Commission of India (CCI), and the Insolvency and Bankruptcy Board of India (IBBI) would also fall under the purview of MCA regulation, as would professional associations like the Institute of Chartered Accountants of India (ICAI), the Institute of Company Secretaries of India (ICSI), and the Institute of Cost Accountants of India (ICOAI).[20]

Quick note:The Ministry/ Regulator opening communication channels for discussions with a cross-section of stakeholders are a very positive step.

[20] Bharath Reddy & Abhishek Jain, *Institutionssalizing public consultations: A step towards building a stakeholder-friendly regulatory threshold,* CYRIL AMARCHAND MANGALDAS (Last visited Feb. 6, 2024)

CRACKS IN THE CODE: UNRAVELLING LIMITATIONS IN INSOLVENCY AND BANKRUPTCY CODE, 2016

- Mr. Abhai Sreekumar. C. A[21]

The insolvency laws in India have experienced a significant transformation by the central legislation called "Insolvency and Bankruptcy Code, 2016" (hereinafter referred as 'The Code').[22] The Indian parliament had approved the Insolvency and Bankruptcy Code (IBC), Bill 2016, on May 28, 2016.[23] The Code outlines procedures for the insolvency of a corporate debtor based on applications filed by the creditor (financial or operational), and also by corporate debtor himself under Section 71, 92, and 103 of the Code, respectively. This is contingent upon a default on a debt exceeding one crore rupees.[24] The Code encompasses regulations for companies, partnerships, and individuals encountering financial challenges in India.[25]

Yet, there have been certain deficiencies in the implementation of the Code.[26] Section 4 of the code allows the commencement of Corporate Insolvency Resolution Process (CIRP) for a default of rupees one crore or more, a relatively modest threshold considering the significant impact of such proceedings. This provision empowers even a minor creditor to initiate insolvency action against a major Corporate Debtor.[27]

When examining the scope and purpose of the Code, it becomes evident that the primary objective of CIRP is not intended on liquidation. In contrast to this, Section 33(2) provides discretionary powers to Committee of Creditors (CoC) where they may unilaterally opt for the liquidation during the CIRP, notifying the National Company Law Tribunal (NCLT). The NCLT is obligated to endorse the Committee of Creditors' decision and issue a liquidation

[21] Student of master's in law (LL.M) Alliance School of Law, Alliance University,
[22] Chatterjee, S., Shaikh, G., & Zaveri, B., An Empirical Analysis of the Early Days of the Insolvency and Bankruptcy Code, 2016, 30 NAT'l L. SCH. INDIA REV. 89 (2018).
[23] Rajput, A. & Prasad, G., Impact of Insolvency and Bankruptcy Code 2016 on Recovery of Loans, Profits, and Non-Performing Assets in Public-Sector Banks, 18 NICE J. BUS. 75 (2023).
[24] Garg, M. & Kalra, K., Discretion in Admission of Application under Sec. 7 of the Insolvency & Bankruptcy Code, 2016: A Win for Arbitration, 15 NUJS L. REV. 301 (2022).
[25] Roca-Fernandez, G., Cross-Border Insolvency in India: A Resistance to Change, 29 TUL. J. INT'l & COMP. L. 99 (2021).
[26] Chavan, P., Bhudevan, N., Subrahmanyam, A. C. V., & Choudhary, A. K., Corporate Insolvency Regime and Its Implications for the Indian Banking System: A Critical Assessment, 50 PRAJNAN 339 (2021).
[27] Pahwa, N. K., Corporate Insolvency: Its Operations and Emerging Problems, 30 NAT'l L. SCH. INDIA REV. 111 (2018).

order. This provision contradicts the legislative intent, potentially leading to significant injustice for the Corporate Debtor and its stakeholders.[28]

Evidently, the code lacks a provision for submitting a rejected Resolution Plan to NCLT. According to Section 60(5) (c) of the Code, the NCLT is empowered to address questions of priorities, law, or facts arising from Insolvency Resolution of the Corporate Debtor. However, in *Vivek Vijay Gupta v. Steel Konnect (India) (P) Ltd.*, NCLT Ahmedabad Bench concluded that, when considering Section 30(6) alongside Section 31, it does not have jurisdiction to entertain a plea challenging the rejection of a Resolution Plan by the CoC, regardless of how arbitrary or unreasonable the rejection may be.[29]

According to Rule 8 of the IBC Rules, withdrawal of applications filed under Rules 4, 6, and 7 is allowed only before admission, as stated by the Adjudicating Authority. Despite settlements, both the NCLT and National Company Law Appellate Tribunal (NCLAT) refused the withdrawal of application once admitted. The sole recourse in such cases is Article 142 of the Indian Constitution as pursued by the Supreme Court case of *Uttara Foods and Feeds (P) Ltd. v. Mona Pharmachem*.[30]

Potential investors are refraining from acquisition particularly in technology and data-centric companies due to concerns about future legal entanglements in data protection or privacy laws. Unclear ownership and regulatory discrimination further deter rational acquirers. Conflicts of interest in the bidding process with the insolvency professionals further discourage foreign investors. The demand for a strong cross-border insolvency laws is high for a smooth acquisition of foreign assets of the corporate debtor.[31]

In conclusion the Code strives for a prompt resolution of stressed corporate assets, bringing relief to creditors, especially banks. Its implementation has ushered in a creditor-friendly system, encouraging debtor repayments and improving recovery for banks, an empirically validated observation established through evidence by Chavan et al., in 2021.[32]

Quick Note: Exploring inherent flaws and constraints within the Insolvency and Bankruptcy Code of 2016, shedding light on its operational challenges.

[28] Pahwa, *supra* note 6, at 111.
[29] *Id.* at 112.
[30] *Id.* at 111.
[31] Handa, A., An Analysis of the Corporate Insolvency Resolution Process as a Route for Acquisitions in India, 29 Int Insolv Rev. 234 (2020).
[32] Chavan, *supra* note 25, at 339.

UNVEILING THE LEGAL FRAMEWORK: DATA PRIVACY AND SECURITY IN CORPORATE LAW

- Ms. Priti Pragyan Pradhan[33]

Digitalization is making this world a small place by connecting people and businesses all over the world in order to facilitate ample amount of exposure and efficiency. Data is the major requirement of these businesses that holds a lot of value and requires immense protection. In protection of the data, corporate and commercial law plays a crucial role in securing data privacy. The rights of an individual on his own personal information, control of its access to any modification, and the transfer of such information is data privacy, which is protected by the data security.

As data of individuals is widely used in the corporate world, the questions that arise are, with increased and immensely developed technological advancements is the data privacy of individuals actually protected or secured? Data being a very valuable asset in today's world is mishandled or comes under unauthorized access. This can lead to serious financial and legal consequences, thus making data protection a huge responsibility for the corporate bodies[34].

There have been various legal frameworks enacted in order to protect data privacy of individuals. Some of them are the General Data Protection Regulation (GDPR) of the European Union that makes it mandatory for organizations to process the personal data of individual residents, the California Consumer Privacy Act (CCPA) that gives power to the residents to have control of their personal information giving them few specific rights regarding the same). In India earlier there was the Personal Data Protection Bill (PDPB) which gave basic principles, rights and obligations regarding data privacy, the enactment of the new Digital Personal Data Protection Act, 2023 gave a new horizon of the legal regulation for protection of data[35]. The DPDP act obliges the data fiduciaries to secure and maintain data completeness as well as report to the Data Protection Board as well as gives

[33] 2nd year BBA.LLB (Hons.) student, Alliance School of Law, Alliance University
[34] Peter smith, tom cockburn, global business leadership development for the fourth industrial revolution, 205 (2020)
[35] Navi, personal data protection act of India (2020)

rights to individuals to control their personal information limiting the use of data of the consumers beyond purpose and prohibiting unauthorized processing of data without consent.

The Companies Act in India plays a crucial role by mandating data protection in order to safeguard the financial and corporate information that is sensitive and valuable. It obliges the companies to inculcate a data breach notification system, secured storage of data and regulated access to prevent risks related to data privacy also making it a need to maintain confidentiality, security and ethics of data.

Though there has been immense protection and regulations enacted and implemented regarding data protection and privacy in the corporate but whether they are sufficient to protect the sensitive corporate and financial data is still a matter of concern. Challenges like implementation issues, advancement of technology, cyber security breaches are making a necessity for corporate to prioritize data privacy and its security as well as transparency in order to mitigate legal, financial and other risks. Data being the most sensitive and valuable asset of an organization needs to be safeguarded by a merge of legal framework, technological advancement in protection of data and cultural compliance for the well-being of the organizations as well as individuals.

Quick note: Data is the most valuable and sensitive asset of the corporate world

ISRAEL-PALESTINE: A WAR OF BOARDROOM?

- Ms. Vrinda Saxena[36]

Israel and Palestine started their most recent war in 2023 which has resulted in over 31000[37] deaths. But is this never-ending Israel-Hamas war, going on only on the grounds? NO, the war between Israel and Palestine is not only on the grounds for land portions where they are killing each other's innocent citizens. This war is also happening in the boardrooms[38] around the world. The boardrooms are facing significant challenges due to this conflict arising out of historical, religious and territorial disputes. This war is not only limited to the borders of middle east, but has also knocked the doors of boardrooms of multinational corporations across the world.

Are the multinational companies sitting silently in their own respective corners of the world? No, because the board of directors have responsibility to take a stance on the Israel-Palestine Conflict. Weather they do it under the pressure of stakeholders or with their own will, a stance in this conflict for board is as important as the directors themselves. Many boards are choosing to adopt neutral stance to avoid upsetting the stakeholder groups while some are feeling compelled to pick a side. This comes with an inherent risk which also include possible backlash, boycotts and goodwill damages.

This war has previously shown a trend where many fast-food chain brands like Domino's, McDonald's, Coca Cola and Starbucks were boycotted in the middle eastern countries for their stance in the Israel-Hamas conflict. The challenges discussed before are ideological because the board's ideologies will affect its overall reputation. And an even bigger problem comes in hand when the board has different ideologies and want to take different stances where some might also want to stay neutral to it.

[36] 2nd year B.B.A.LL.B. *(Hons.)* Student, Alliance School of Law, Alliance University
[37] "Hostilities in the Gaza Strip and Israel - reported impact | Day 146" , United Nations Office for the Coordination of Humanitarian Affairs, (March 1,2024), https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-reported-impact-day-146
[38] HABIB REHMAN, BORDERS TO BOARDROOM: A MEMOIR, (2014)

The Palestine and Israel war also brought in economic chaos to the boardroom and because of this conflict the global market is in turmoil. The war is still going on and has a potential of impacting global economy in a way that it has to suffer inflation. Middle eastern nations are the largest producers of oil and the tension between Israel and Palestine scares away nations because their stance in this war can also make them suffer with oil. The war brings in economic challenges to oversees company operating in the areas of war. This conflict is impacting global market in energy, technology and defence sectors. And there is also a need to monitor geopolitics because it causes disruptions in the global market which affects the board as well.

"If we don't end war, the war will end us" said by H. G. Wells is as true as steel. The Israel-Palestine War has been going on for almost an year now, many people died, various companies were closed down and many were boycotted. But did this end the war? No, but what it did was, impact the entire World. The tension was between two nations but economic unrest was for the whole global economy. The only solution in hand for the boardrooms is to analyse the upcoming threats and demonstrate their strategic acumen. This is not only a war for the people of Israel and Palestine but also for the boardrooms of the entire world.

Quick note: Israel- Palestine war has now entered the boardrooms of multinational corporations impacting business world

IBBI'S VISION FOR CROSS-BORDER AND GROUP INSOLVENCY FRAMEWORK IMPLEMENTATION

- Ms. Nawvi K[39]

Ms. Jenitta M[40]

Global economies are becoming increasingly interconnected and dependent on one another, therefore they must figure out how to deal with the difficulties posed by cross-border legislation. Businesses increasingly frequently operate outside legal boundaries. Mr. Shukla urged insolvency professionals (IPs) to prepare for forthcoming challenges such as Digital Assets, Crypto currencies, the Cape Town Convention, etc., to ensure the on-going excellence of the Indian insolvency ecosystem[41]. At the moment, the IBC lacks a thorough structure pertaining to cross-border insolvency. It only touches on this topic in two places, specifically in Sections 234 and 235 of Part V, "Miscellaneous". Section 234 grants authority to the central government to engage in agreements with foreign nations aimed at addressing issues concerning cross-border insolvency and section 235 deals with Letter of request to a country outside India in certain cases[42]. In a general term cross border insolvency is that when a debtor who is insolvent possesses credit and/or debtors in multiple jurisdictions, spanning various countries. Whereas on the other hand, Group Insolvency refers to a structure in which if several entities within a single corporate group become insolvent, their resolutions can be combined in one court[43]. The primary aims of this framework are to facilitate the restructuring of the group as a unified entity and to optimize the use of its collective assets for the benefit of both the corporate group and the debtor. Under this arrangement, substantive consolidation is permitted, allowing the grouping of assets and liabilities of the various members in a manner that treats them as a cohesive economic entity.

Whole Time Member of the Insolvency and Bankruptcy Board of India (IBBI) Mr. Sudhaker Shukla on the 7th Foundational Day of the Indian Institute of Insolvency Professionals of Institute of Chartered Accountants of India [ICAI (IIIPI)] insinuated that India could go for

[39] 3rd year B.A. LL.B. *(Hons.)* Student, Alliance School of Law, Alliance University
[40] 3rd year B.B.A. LL.B. *(Hons.)* Student, Alliance School of Law, Alliance University
[41] KR Srivats, IBBI hints at simultaneous rollout of cross-border and group insolvency frameworks, The Hindu , December 07, 2023, https://www.thehindubusinessline.com/economy/ibbi-hints-at-simultaneous-rollout-of-cross-border-and-group-insolvency-frameworks/article67613701.ece
[42] Insolvency and bankruptcy code , No.31, Acts of parliament, 2016 (India).
[43] Shikha Sharma Jaipuriar, CROSS BORDER INSOLVENCY IN INDIA - A NEW REGIME IN THE MAKING, MANUPATRA ARTICLE (Feb 5, 2023, 5.00 PM) https://articles.manupatra.com/article-details/CROSS-BORDER-INSOLVENCY-IN-INDIA-A-NEW-REGIME-IN-THE-MAKING

simultaneous introduction of Cross Border Insolvency and Group Insolvency frameworks. His remarks are considered significant because international bodies have already recommended that India go on to introduce Cross Border Insolvency without even having a Group Insolvency in the picture.

Shukla has pointed out, "*Increasingly, we realise that without group insolvency the aspect of cross insolvency will not work at all. So perhaps group insolvency needs priority to cross border. That wisdom is there".*[44] He also added *"Best practices of one country can't be exactly implemented in another regime. There have been large deviations from UNCITRAL (United Nations Commission on International Trade Law) model in implementing Cross Border Insolvency Framework from one regime to another wherein each and every regime has carved out exceptions as per their requirements"* It can be inferred over here that India has determined the regime it would be having under Cross Border Insolvency and that the country stands much informed on this regime than it was earlier.[45]

Pertaining to this speech rendered by Mr. Shukla, Mr. Ashok Haldia, Chairman of the IIIPI Board underscored numerous capacity-building activities of IIIPI that the Insolvency and Bankruptcy Code is a dynamic law that will change alter, adapt, and adopt with the changing needs of the national and global economy along with the technological changes. Finally he expressed confidence in the upcoming frameworks on Cross Border Insolvency, Group Insolvency, and Individual Insolvency will be out soon.[46]

While some nations have legislation in place for group insolvency, India lacks a legislative framework to govern the subject. Various committees were appointed in attempt to draft legislations concerning Cross-border and Group insolvencies. On the basis of reports of the government has planned to amend IBC as its primary goal is to amend and insolvency to optimize asset value in a time linked method. As Global economies are becoming increasingly interconnected and dependent on one another, therefore India must figure out how to deal with the difficulties posed by cross-border and group insolvencies.

Quick note: Prioritizing group insolvency in cross-border frameworks in international deviations from the UNCITRAL model. This underscores India's informed approach to implementing cross-border insolvency. With global economies intertwined, India must navigate the complexities of cross-border and group insolvencies effectively.

[44] Ibid 1
[45] UNCITRAL Model Law on Cross-border Insolvency (1997), United Nations Commission on International Trade law, https://uncitral.un.org/en/texts/insolvency/modellaw/cross-border_insolvency
[46] Ibid 1